

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawaii**

December 9, 2005

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**REGARDING:** Conservation District Enforcement File HA 05-19  
Regarding Construction of a Single Family Residence Not  
in Accordance of Approved Construction Plans

Mitigative Measures to Reduce Impact to the Natural  
Resources

**LANDOWNERS:** A. David and Mary Carroll

**TMK's:** (3) 9-5-016:036

**AREA OF USE:** 17,692 square feet

**AREA OF PARCEL:** 47.5 acres

**LOCATION:** Hokukano, Ka'u, Island of Hawaii

**SUBZONE:** General

**SUMMARY BRIEF:**

Enforcement File HA 05-19 was deferred during the Board of Land and Natural Resources (Board) meeting of September 23, 2005. The purpose of the deferral was to review the records of the Board meeting of February 23, 2001 regarding the approval of Conservation District Use Permit (CDUP) HA-3002 for the construction of a single family residence and to seek Attorney General (AG) advice to explore actions the Board could take regarding the applicant's failure to construct the residence to approved plans.

The AG has indicated that the Board has the powers to:

- Revoke the permit for failure to comply with all permit conditions;
- Require the landowner to build accordingly to original approved plans;
- Require the landowner to submit plans to connect the two separate structures.

The original permit approval stressed that there would be no separate south wing with a bar sink feature. The Bar sink feature was removed and the siting of the home was reconfigured. The Department reviewed and approved plans. However, approved plans that connected the two existing separate structures were not adhered to.

The site inspection of December 7, 2004 revealed that the 2 story separate wing consisted of a bedroom and bathroom on the first level and a room being used as an office upstairs. Because there are no kitchen facilities and the property is located in a remote area, this living area is less likely to be used as a commercial rental. In addition, Condition # 4 of CDUP HA-3002 prohibits the dwelling to be used for rental or commercial purposes.

Although the Board does have the authority to revoke the permit, Staff does not believe that this would be an equitable action, since the violations are curable. The overall design of the existing structure is built accordingly to approved plans. Staff continues to support the original recommendations of this enforcement file.

#### **DESCRIPTION OF AREA:**

The subject 47.5-acre oceanfront property is located on the island of Hawaii in the Ka'u district, two miles north of Whittington Beach Park and lies within the General and Resource subzone of the Conservation District. State of Hawaii land lies to the south, to the east with the Hawaii Belt Highway beyond, and to the west via the ala loa or government trail makai of the subject area. There is a private landowner to the north and the parcel continues to the west with the Pacific Ocean beyond (**Exhibits 1, 2 & 3**).

A Single Family Residence and associated improvements exists on the subject parcel. The Board of Land and Natural Resources (BLNR) approved Conservation District Use Application (CDUA) HA-3002 for the construction of the Single Family Residence (SFR) and associated improvements on February 23, 2001 subject to twenty-three conditions (**Exhibit 4**). Access, electrical and telephone services are provided off of Hawaii Belt Road. Water is from a private water catchment system or is trucked in. Sewerage is through an Individual Wastewater System.

#### **ALLEGED UNAUTHORIZED LAND USES:**

In the Summer of 2004, the Office of Conservation and Coastal Lands (OCCL) received various complaints regarding the construction of the SFR. On July 16, 2004, OCCL Staff conducted a cursory site visit. The SFR did not appear to be built in accordance with the approved construction plans on file with the Department (**Exhibit 5**).

On December 7, 2004, Staff conducted another site inspection and noted the following: An unpermitted structure appears to exist in the northeast corner of the property (**Exhibit 6**); Construction of the SFR did not appear to be in accordance with construction plans on file with the Department (**Exhibit 7 & 8**); The structure appeared to resemble two living units and an entry way had been constructed without approval (**Exhibit 9**).

The property owners Counsel, Mr. Steven Lim, was notified of this by correspondence dated December 29, 2004. In addition, Mr. Lim was also notified that the OCCL had no record that the permit approval had been placed in recordable form as a part of the deed instrument of the legal lot of record (condition # 5) and that the Department was requesting input from the U.S. Fish and Wildlife and the State of Hawaii Division of Aquatic Resources whether lights emanating from the residence could impact wild life and the OCCL may seek additional conditions from the Board of Land and Natural Resources to mitigate visual impacts resulting from the development such as repainting and landscaping (**Exhibit 10**).

By correspondence dated February 4, 2005, Mr. Lim responded to the noted concerns:

"The unpermitted structure at the northeast corner of the property is a temporary storage building that is being utilized during the construction of the SFR. At the conclusion of the construction, this structure will be dismantled and removed from the property;"

"The Carroll's are currently working with OCCL to process the "as-built" plans for the entryway feature;"

Regarding the visual impacts:

"The exterior wall finish is a synthetic stucco known as dryvit, and has an elastomeric finish with an integral color. The tan shade "natural white" exterior color was selected by the Carrolls their preferred proposed lighter white in keeping with the earth tones compatibility provision. The cost of installing the dryvit wall was costly but requires minimal future maintenance, is not suitable for repainting, and is durable against sea sprays." (**Exhibit 11**)

In addition, a copy of the recordation of permit conditions with the deed was submitted. Furthermore, correspondence from the Architect states the unpemitted structure (Sears shed) in the northeast corner has been removed (**Exhibit 12**). Because condition # 5 regarding deed recordation has been complied with and the unpermitted structure has been removed, Staff believes these two issues have been resolved. Therefore the specific Conservation District violations, which are the subject of this submittal are: 1) Not building in accordance with approved construction plans; and 2) Unapproved construction of an entryway, courtyard and stonewalls.

**REFERRAL OF ALLEGED VIOLATIONS TO THE LAND BOARD RATHER THAN THE HEARING OFFICER/ADMINISTRATIVE PENALTY SYSTEM (HOAPS):**

A decision was made to refer the subject alleged violations to the Board of Land and Natural Resources rather than HOAPS because the violations are alleged in a single report. HOAPS draws a distinction between Level I and Level II violations. Level I violations are of the more serious category and must be referred to the Board of Land and Natural Resources, while Level II violations may be processed through HOAPS. HOAPS includes criteria for determining Level I and Level II violations. In this case, the subject

alleged violations rise to Level I because of noncompliance with Board imposed conditions.

In addition, pursuant to CDUP HA-3002 condition # 13 that states, "Where any interference, nuisance, or harm maybe caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate these interference, nuisance, harm, or hazard." Mitigative measures are also proposed in this report to the Board for consideration to lessen the impacts of the development on scenic and natural resources.

## **RESOLUTION OF UNAUTHORIZED LAND USES:**

### Conservation District

Chapter 13-5, Hawaii Administrative Rules (HAR) and chapter 183C, Hawaii Revised Statutes (HRS), regulate land uses in the Conservation District by identifying uses that may be allowed by Conservation District Use Permit. The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. Chapter 13-5, HAR defines "land use" in part as: (1) The placement or erection of any solid material on the land if that material remains on the land more than fourteen days, or which causes a permanent change in the land area on which it occurs; (2) The grading, removing, harvesting, dredging, mining or extraction of any material or natural resource on land of any material or natural resource on land; (3) The subdivision of land; or (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

Not building in accordance with approved construction plans and unapproved construction of an entryway, courtyard and stonewalls, are separate land uses that occurred in the conservation district without approval, and therefore allegedly violate the above chapters. This report and staff recommended conditions seek to resolve the two subject conservation district violations. Pursuant to Chapter 183C, HRS, the maximum fine for a conservation district violation is \$2,000.00 per violation, or \$2,000.00 per day.

## **DISCUSSION**

The Permittee appears to be noncompliant in three areas:

- 1) The Department did not approve plans for a courtyard. Photos taken during the cursory site visit of July 16, 2004 illustrates that the rockwalls and entryway of the courtyard were constructed prior to plan approval (**Exhibit 13**).

Thus, the Permittee violated condition # 6 that states, "Before proceeding with any work authorized by the department or the board, the applicant shall submit four copies of the construction plans and specifications to the chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the applicant. Plan approval by the chairperson does not constitute approval required from other agencies;"

- 2) Condition # 19 specifically states, "The single family residence shall not contain any "South wing or separate, but connected living area" or any other similar design."

On July 6, 22001, the Land Division issued a letter approving the preliminary construction plans for the Carroll residence (**Exhibit 14**). The letter noted "While the structure does appear to consist of somewhat separated living units, this design will be considered sufficiently integrated to receive preliminary approval of the design." In addition, the Carrolls were asked to delete a wet-bar and sink from the plan. The preliminary design contained a spiral staircase that appeared to "integrate" the structures. Staff felt comfortable with the proposed design and felt that it would not violate condition # 19 that expressively prohibited a south wing or separate living area. On October 15, 2001, final plans were approved (**Exhibit 15, 16, 17 & 18**).

When staff began receiving complaints in the summer of 2004 that two (2) residences had been constructed on the property an investigation was initiated. Staff visited the site on two occasions. Photographs were taken during these site visits (See Exhibits 7 & 8). The photographs clearly provide evidence that the residence was not constructed in accordance with approved plans and in violation of condition 19. The photographs give the appearance of two separate structures. Based on this site visit, staff requested "as built plans" (**Exhibit 19**). These plans were provided and differ from the approved plans.

- 3) Pursuant to Chapter 13-5, Exhibit 4, Single Family Residential Standards, Compatibility Provisions, A SFR must be compatible with the surrounding environs.

The light colored hue of the SFR is not compatible with the surrounding locality. The SFR appears to stand out due to the contrast of the dark lava fields with the white synthetic stucco exterior.

### **OCCL Actions**

The Department has received significant complaints regarding the construction of this residence. Because certain members of the community asked that the permit be revoked, Staff conducted a thorough review of the events surrounding the processing of the original CDUA as well as actions taken by the landowner since the permit was approved to ensure that there have been no major anomalies in this case.

Staff consulted with the State Historic Preservation Division in regards to the archaeological cultural resources. The Division of Aquatic Resources and the National Marine Fisheries Service were also consulted in regards to the potential impact to sea turtles. Staff attended a public meeting at Na'alehu on December 7, 2004 to listen and to hear community residents concerns.

Staff has concluded, based on the record that proper procedures were followed during the processing of the application: A site inspection was conducted on July 19, 2000 by Historic Preservation Staff (**Exhibit 20**); Two copies of the application and the Draft Environmental Assessment were sent to Naalehu Public Library (**Exhibit 21**); In

response to a petition signed by 155 residents, the landowner's Counsel held two public meetings. One at 1 pm on Sunday, November 12, 2000 on site and the other at 6:30 pm at the Naalehu Community Center on November 14, 2000 (**Exhibit 22 & 23**); The Final Environmental Assessment was sent to the Office of Environmental Quality Control for publication and the Pahala School and Public Library and to the Na'alehu Public Library (**Exhibit 24, 25, & 26**).

Staff further notes the Staff report generated for CDUA HA-3002, signed by the former Chairperson and reviewed by the Board of Land and Natural Resources disclosed past unauthorized actions, land uses, the petition signed by 155 Ka'u residents opposing the development, desecration of burials, historical and archeological sites and the potential precedent setting nature of siting a residence on a rugged, rural open space landscape (**Exhibit 27**). The Land Board was fully informed of the issues surrounding the application. On February 23, 2001, the Board of Land and Natural Resources approved CDUA HA-3002 for a Single Family Residence subject to 23 conditions.

### **Potential Impact To Turtles**

Staff notes this is the first SFR in the subject area. Daily human activity impacts have not been examined or quantified in the past. However, this area is noted for a number of small rocky beaches where the critically-endangered Hawksbill sea turtle is known to nest. Beachfront lighting from coastal development may impact both nesting females and hatchling turtles. Coastal residents and visitors must prevent all lights from illuminating and being visible from the beach including security lights, balcony and porch lights, landscaping and decorative lights, flashlights and car headlights.

Upon review of photos and blueprints of the SFR with large ocean-facing windows and outdoor lanai areas, the Division of Aquatic Resources (DAR), provides the following comment, "It is our opinion that the existing structure as described would have the potential to cause negative impacts on nesting sea turtles and their hatchlings." In addition, the following mitigation recommendations are given: Erect an artificial light screen; Plant a vegetation buffer; Reorient outside lighting utilizing hoods and shields; Refit outdoor light fixtures; Utilize window coverings such as blinds or curtains; Window tinting; and Behavior modification (**Exhibit 28 & 29**).

### **Environmental Compatibility**

The open rugged lava coastlines of Ka'u are a scenic resource. Pursuant to the Hawaii Administrative Rules Chapter 13-5, Exhibit 4 Single Family Residential Standards, Compatibility Provisions, the SFR shall be compatible with the surrounding environs through landscaping to screen structures or the color of the surface of the structure and roof should be earth tones, or compatible with surrounding areas. Regarding the compatibility of the SFR to the surrounding environs, Staff notes, the contrast of the house color against the former lava flows are intrusive to the surrounding area (**Exhibit 30 & 31**). The applicant's Counsel has stated the SFR is not suitable for painting. However, a much darker hue would mitigate the contrast significantly. The elements of the sun, wind and particulate matter of the area will weather the structure, however, it

will most likely not be to a degree to lessen the impact of the scenic resource. Landscaping could decrease the impact on view plains. However, in correspondence with the Architect (see Exhibit 12), it has been stated that, "Even plants indigenous to the area have proven to be very difficult to grow. Only the native species can survive the harsh environment and persistent winds." Therefore Staff believes that landscaping may not be the appropriate response.

### **Cultural Resources**

The Historic Preservation Division (HPD) was consulted and based upon an October 13, 2004 site inspection HPD has determined that "There are archaeological features in close proximity to the SFR both on their property and on the adjacent State property. These features have never been formally recorded." In conclusion, HPD states "It remains unclear if there is oral testimony within the Ka'u Community or information within the historical record that would specifically identify the sites as burials. Archaeological testing of features in close proximity (on the a'a flow) to the project area may support the original interpretation of the site as a cemetery." **(Exhibit 32)** When OCCL Staff visited the site on December 7, 2004, burials were pointed out on adjacent sides of the SFR.

### **Prior Violation**

On July 12, 1977, the County of Hawaii notified the former landowner of a complaint received regarding construction of roadways, **grading**, construction of a reservoir, historic site destruction and blocking of the government beach trail with boulders. In addition, the County informed the former landowner that the land was within the Conservation District and that a Special Management Area (SMA) permit was required **(Exhibit 33)**. The former landowner applied for a Special Management Area (SMA) permit in December of 1977 and submitted a Conservation District Use Application (HA-1065) in June of 1978 for a Single Family Dwelling and Stock Grazing Use.

However, the Board denied CDUA HA-1065 without prejudice on November 22, 1978 because an SMA clearance was not received prior to the Board meeting **(Exhibit 34)**. CDUA HA-3002 for the existing SFR discusses this former application and states, "Staff was of the opinion that the Board's action of November 22, 1978 resolved violations on the parcel. Staff understands that it was the Board's intention in 1978 to only require restoration of the land if SMA permit or clearance **could not** be obtained." On November 29, 1978, the former landowner did receive an SMA from the County of Hawaii. However, two months later the former landowner passed away in January of 1979.

As mentioned, the former landowner graded the area back in the '70's. Regarding the application for the existing SFR, the Historic Preservation Division's determination (See Exhibit 20) states "We believe a house could be constructed on the existing house pad on the condition that there is no additional grading work conducted off the existing pad and access road. If your client agrees to the above condition, then the proposed action will have "no effect" on significant historic sites. In the future, if the parcel is developed, an archaeological inventory survey would be requested by our office prior to any permit

approvals." There is no evidence that the current landowners have graded beyond what was previously graded in 1977. Staff has spoken to community members and has reviewed documentation that strongly suggests the existing house site that was previously graded by the former landowner in 1977 is the site of the current SFR. It does not appear that additional grading took place.

Furthermore, with the passing of the former landowner, the surviving landowner did not complete the process of the land exchange with the State of Hawaii that was executed on December 8, 1975. The approved land exchange was for public purpose to provide a safer access to the subject property. The State acquired the former access road in exchange the former landowner acquired the existing access road (**Exhibit 35**).

However, the subdivision/consolidation in the Conservation District was never approved as reflected in property tax maps and County of Hawaii records (**Exhibit 36 & 37**). Staff recommends an After the Fact Conservation District Use Application be filed to legalize this established access subject to Board approval.

This submittal and notice of the Board's meeting will be sent to the Counsel for the subject property owners by certified mail to the address of record in Hawaii.

## **FINDINGS**

1. That the landowner did in fact, authorize, cause or allow two separate unauthorized land uses (not building in accordance with approved construction plans and unapproved construction of an entryway, courtyard and stonewalls) to occur;
2. That the alleged unauthorized land uses are of a serious nature;
3. That the two unauthorized land uses occurred within the State Land Use Conservation District, General subzone;

## **AS SUCH, STAFF RECOMMENDS AS FOLLOWS:**

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board find the landowner in violation of Chapter 183C and Chapter 13-5, Hawaii Administrative Rules (HAR), and is subject to the following:

1. The landowner violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in two instances by failing to properly connect the two wings of the Single Family Residence and failing to obtain approval prior to construction of an entryway, courtyard and stonewalls. The alleged is fined a total of \$4,000.00 for two Conservation District violations.



2. The landowner is fined an additional \$1,200.00 for administrative costs associated with the subject violations;
3. The landowner shall pay all fines (total \$5,200.00) within ninety (90) days of the date of the Board's action;
4. The landowner shall submit construction plans to the Office of Conservation of Coastal Lands, in accordance with Chapter 13-5 HAR, Exhibit 4, to properly attach the two separate structures within 120 days of the Board's action;
5. Upon approval, the landowner shall complete construction in accordance with the approved plans within one year of the plans approval;

Regarding mitigative action to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

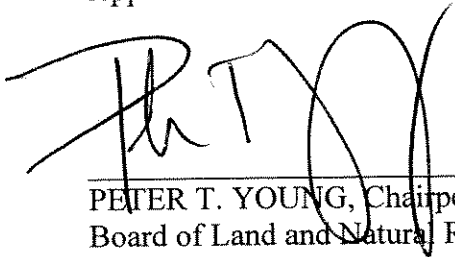
6. The landowner shall submit to the Office of Conservation and Coastal Lands potential shades and hues of brown, gray, or green for painting of the Single Family Residence to blend in with the surrounding environment within 90 days of the Board's action;
7. Upon approval, the landowner shall paint the Single Family Residence within 90 days of approval;
8. The landowner shall submit to the Office of Conservation and Coastal Lands a residential light screening and mitigation plan within 90 days of the Board's action;
9. Upon approval, the landowner shall implement the residential light screening and mitigation plan within 90 days of approval;
10. There shall be no outside lighting on the north and east sides of the SFR;
11. That an After the Fact Conservation District Use Application be filed for the subdivision/consolidation for the land exchange of December 8, 1975 with the State of Hawaii;
12. That in the event of failure of the alleged to comply with any order herein, the landowner shall be fined an additional \$2,000.00 per day until the order is complied with; and
13. That in the event of failure of the landowner to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,



K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:

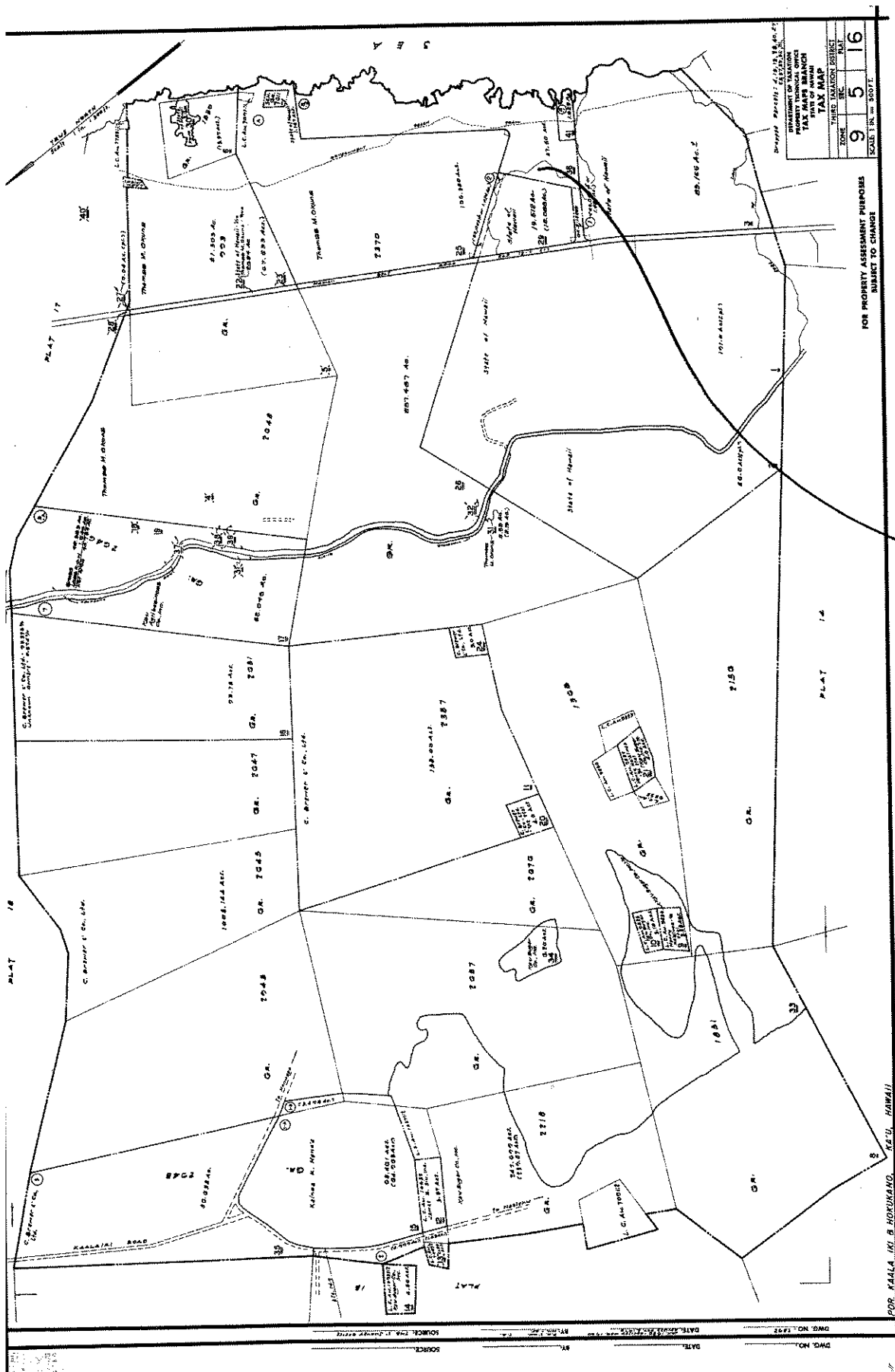


PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

[illegible]

subject area





DEPARTMENT OF TAXATION PROPERTY SERVICES OFFICE TAX MAP DIVISION STATE OF HAWAII	
TAX MAP	
ZONE	THIRD TAXATION DISTRICT
9	5
16	
SCALE 1 IN. = 500 FT.	

FOR PROPERTY ASSESSMENT PURPOSES  
SUBJECT TO CHANGE

subject parcel

EXHIBIT 3



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

**FEB 27 2001**

File No.:CDUA HA-3002B

Ref.:PB:EAH

Mary and David Carroll  
603 Winsford Rd.  
Bryn Mawr, PA 19010

Dear Carrolls,

**Subject:** Conservation District Use Application (CDUA) No. HA-3002 for the Construction of a Single Family Residence at Kaalaiki and Hokukano, Kau, County of Hawaii, TMK 3<sup>rd</sup> 9-5-16:36

I am pleased to inform you that on February 23, 2001, the Board of Land and Natural Resources (Board) approved your CDUA for the construction of a single family residence at Kaalaiki and Hokukano, Kau, County of Hawaii, TMK 3<sup>rd</sup> 9-5-16:36, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of Chapter 13-5, Hawaii Administrative Rules (HAR), including the standard conditions listed in 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules;
4. The single family dwelling shall not be used for rental or any other commercial purposes;
5. The applicant shall provide documentation (e.g. book and page or document number) that this permit approval has been placed in recordable form as a part of the deed instrument of the legal lot of record, prior to submission for approval of subsequent construction plans;

**EXHIBIT 4**

6. Before proceeding with any work authorized by the department or the board, the applicant shall submit four copies of the construction plans and specifications to the chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the applicant. Plan approval by the chairperson does not constitute approval required from other agencies;
7. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and, unless otherwise authorized, shall be completed within three years of the approval of such use. The applicant shall notify the department in writing when construction activity is initiated and when it is completed;
8. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
9. The applicant understands and agrees that the permit does not convey any vested rights or exclusive privilege;
10. In issuing the permit, the department and board have relied on the information and data which the applicant has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
11. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the board of water supply;
12. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
13. Where any interference, nuisance, or harm maybe caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
14. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
15. Cleared areas shall be revegetated within thirty days unless otherwise provided for in a plan on file with and approved by the department;

16. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
17. Access to the Government Beach Trail shall not be blocked;
18. If, during construction, historic sites, burials or burial remains are encountered, construction shall stop immediately, the Division of Historic Preservation notified immediately and appropriate measures approved or required by the department implemented prior to subsequent construction;
19. The single family residence shall not contain any "South wing or separate, but connected living area" or any other similar design;
20. This permit does not include approval for development of a water well. Any water well use, or any other use outside of the access road and residence construction sites shall require an amendment to this permit;
21. Other terms and conditions as prescribed by the chairperson;
22. Failure to comply with any of these conditions shall render this permit void; and
23. Access will not be denied for people accessing the property who are involved in traditional and customary practices.

Although the proposed South wing, or separate but connected living area, was removed from the use approved by the Board, the maximum single family residence developable area approved remains 4,892 square feet. When submitting construction plans for approval, the area to be developed for the residence may be below, but not greater than 4,892 square feet.

Please acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to us within thirty (30) days.



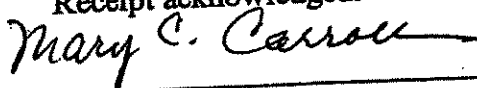
Should you have any questions on this matter please contact Eric Hill our planning staff at (808) 587-0380.

Aloha,

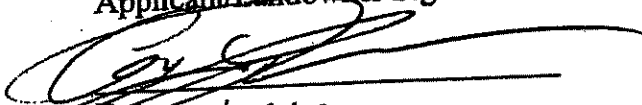


Dean Y. Uchida, Administrator

Receipt acknowledged:



Applicant/Landowner Signature

  
Date 3/5/01

c: Hawaii Board Member  
DOCARE/HPD/Na Ala Hele  
DOH/OEQC/OHA  
County of Hawaii, Department of Planning  
Mr. Steven Lim, Carlsmith Ball, 121 Waiianuenue Ave., Hilo, HI 96720

An aerial, black-and-white photograph of a residential street. The street runs vertically through the center of the frame. On the right side of the street, a white car is parked. The surrounding area is filled with houses and trees. The image has a grainy, high-contrast quality.

EXHIBIT 5

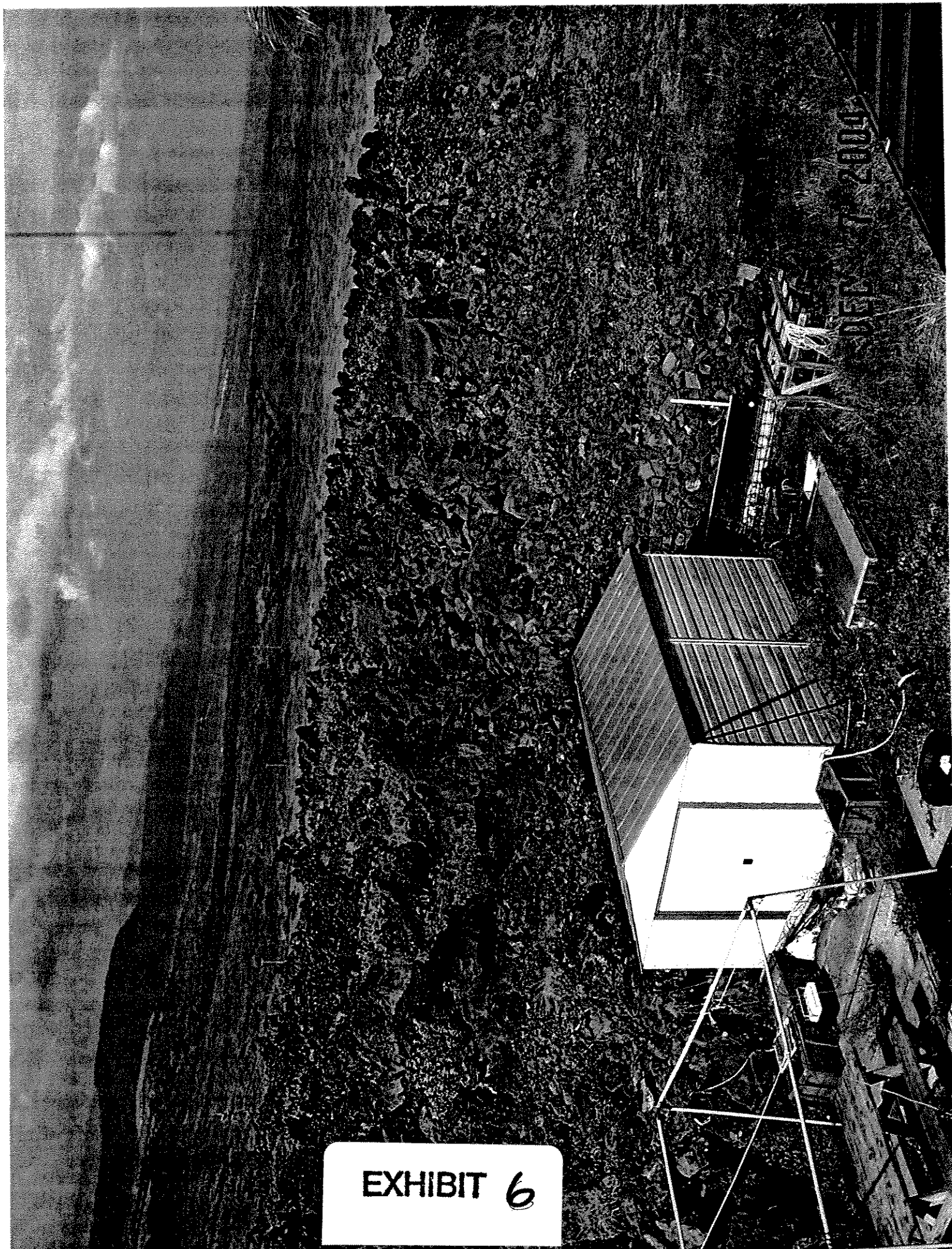


EXHIBIT 6





EXHIBIT 7

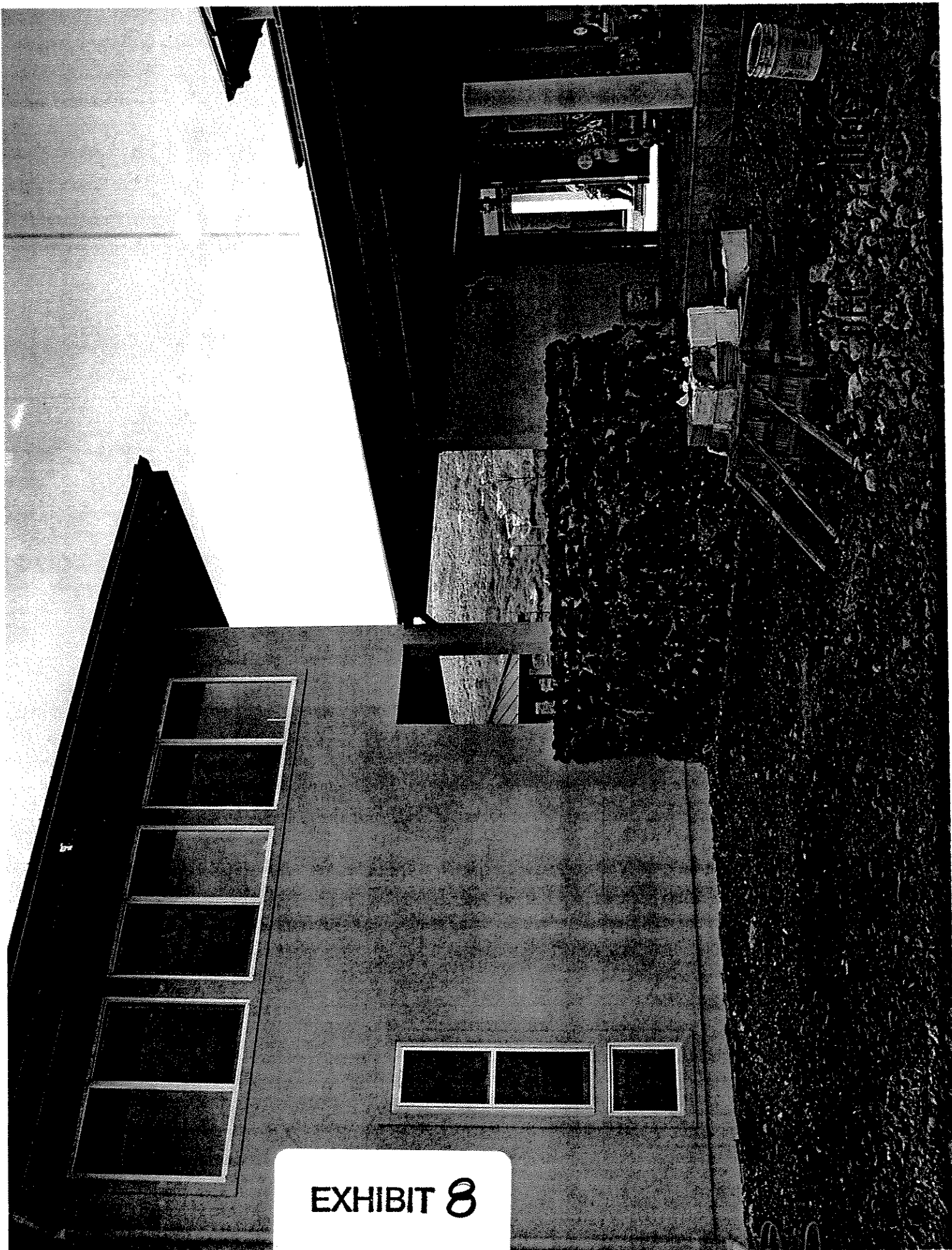


EXHIBIT 8

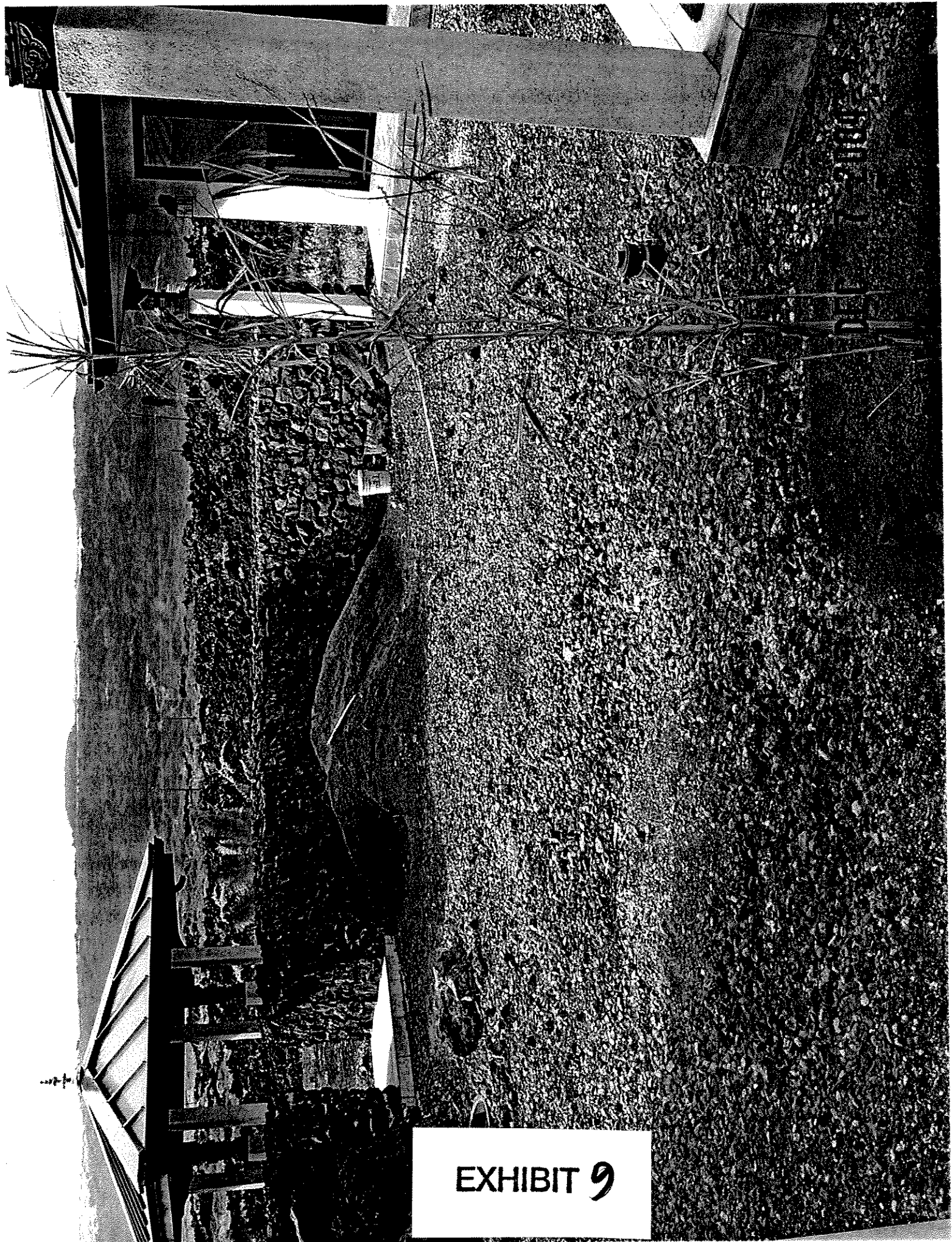


EXHIBIT 9

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON  
DEPUTY DIRECTOR - LAND

YVONNE Y. IZU  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF.:OCCL:TM

FILE NO.: HA 05-19

Steven S. C. Lim  
Carlsmith Ball LLP  
121 Waianuenue Avenue  
P.O. Box 686  
Hilo, Hawaii 96721-0686

DEC 29 2004

Dear Mr. Lim,

The Office of Conservation and Coastal Lands (OCCL) would like to thank you and your client for taking the time for OCCL to conduct a site visit of the Carroll Single Family Residence (SFR) located on Conservation District land in Hokukano, Ka'u, island of Hawaii, (3) 9-5-016:036.

The OCCL has some concerns regarding permit compliance of Conservation District Use Permit (CDUP) HA-3002. During the site visit, the following was noted:

An unpermitted structure appears to exist in the northeast corner of the property. **(Exhibit A)**. Please describe the dimensions (length x width x height) and the function of the structure.

Construction of the SFR does not appear to be in accordance with construction plans on file with the Department.

Plans for the entrance and courtyard area have changed significantly from the approved plans. The OCCL is in receipt of revised plans. However, construction of the entry and courtyard area has commenced without Departmental approval.

In addition, the OCCL has no record that the permit approval has been placed in recordable form as a part of the deed instrument of the legal lot of record. As a result of public comments received during a recent meeting held at Naalehu, Ka'u, the Department will request input whether lights emanating from the residence can impact wildlife in the area from the U.S. Fish and Wildlife Service and the Division of Aquatic Resources. Furthermore, the OCCL may seek additional conditions from the Board of Land and Natural Resources to mitigate visual impacts resulting from the development (such as repainting and landscaping).

EXHIBIT 10

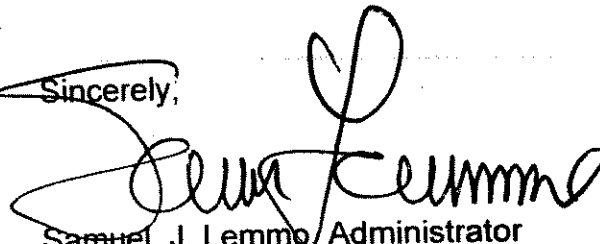


Steven S. C. Lim  
Carlsmith Ball LLP

FILE NO.: HA 05-19

OCCL will notify you when the issue will be scheduled before the Board of Land and Natural Resources meeting, at a time, date and location to be announced. You may wish to respond to these matters in writing or contact us at your earliest convenience. Should you have any questions, please contact Tiger Mills of our Office of Conservation and Coastal Lands at (808) 587-0382.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel J. Lemmo". The signature is fluid and cursive, with a large initial "S" and "L".

Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

cc: Chairperson  
County of Hawaii, Department of Planning  
Hawaii District Land Office



# CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE

P.O. Box 686

HILO, HAWAII 96721-0686

TELEPHONE 808.935.6644 FAX 808.935.7975

WWW.CARLSMITH.COM

DIRECT DIAL NO.

SLIM@CARLSMITH.COM

February 4, 2005

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2005 FEB -9 A 9:22  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

✓ Samuel J. Lemmo  
Administrator  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Re: Carroll Single-Family Residence at Hokuano, Ka'u, Hawaii,  
TMK (3) 9-5-16:36, File No.: HA05-19, CDUP HA-3002

Dear Mr. Lemmo:

We are in receipt of your December 29, 2004 letter regarding the Carroll residence at the above referenced property.

- A. Unpermitted Structure: The structure noted in your letter at the northeast corner of the property is a temporary storage building that is being utilized during the construction for the house, which is almost near completion. At the conclusion of the construction, this structure will be dismantled and removed from the property. The structures dimensions are approximately 12 feet in length, 10 feet in width and 6 feet in height.
- B. Construction of the SFD and related improvements: My client is currently working with your office to process the "as-built" plans for the entryway feature.
- C. Permit in recordable form: Departmental Permit No. HA-2923 was executed by the Carrolls, and a fully executed copy was provided to DLNR on March 7, 2000. Inadvertently, the Permit was not recorded at the Bureau.
- D. Visual Impacts: We are also reviewing the concerns relating to mitigation of visual impacts resulting from the development. As you know, your department approved both the structure and landscaping plans for this project. However, the Carrolls have always been sensitive to mitigate the impacts of this development, even if not technically required under the permit conditions, such as implementing underground utility lines from the access driveway to the house. The exterior wall finish is a synthetic stucco known as dryvit, and has an elastomeric finish

with an integral color. The tan shade "natural white" exterior color was selected by the Carrolls their preferred proposed lighter white in keeping with the earth tones compatibility provision of Exhibit 4, relating to Single Family Residential Standards. The cost of installing the dryvit wall was costly but requires minimal future maintenance, is not suitable for repainting, and is durable against sea sprays.

We are enclosing copies of photographs taken in 1998 that show the existing lava rock bench along the highway of the adjoining State's parcel. These photos clearly show that if not for grading activities by the State and/or County, the view of the house from the highway would have been minimal. The Carrolls were concerned about the State and/or County's grading of the State's parcel at TMK: (3) 9-5-16:26 and wrote letters to these agencies (see attached).

- E. Wildlife Impacts: The shoreline fronting the Carrolls' project consists of several thousands of lineal feet of 10 to 20 ft. high sea cliffs. The only suitable entry area from the sea would be a small sandy beach located approximately 300 to 400 feet north of the Pahala side boundary of the Carrolls' Property. These geographical conditions make it improbable that the Hawksbill Turtles would access land within this area for nesting. In addition, the house is located approximately 1,500 feet from the sea cliffs, and there are no landscaping lights on the Property that would impact wildlife, if any, in the area. The impacts from the lights of night fishermen and automobile lights from the campers driving and fishing along the coastline far exceeds the impact from the Carroll's house.
- F. Recordation of CDUP No. HA-3002: Attached is a copy of CDUA No. HA-3002, which was recorded at the Bureau of Conveyances on 02/01/05 as Document No. 2005-020298.

Upon completion of our preliminary plans I would like to meet with you to discuss the plans and reach a reasonable solution. Until then, we understand that you will not set this matter for any hearing before the Board of Land and Natural Resources until such time as the issues have crystallized. If you have any questions please feel free to contact me.

Very truly yours,



STEVEN S.C. LIM

SSL:KYL  
Enclosures  
xc: David and Mary Carroll  
Neil Erickson - Architect  
4819-6724-7104.1

**Neil C. Erickson, Architect**  
82 Ponahawai Street, Hilo, Hawaii 96720

Telephone: (808) 969-4945

July 19, 2005

State of Hawaii  
Department of Land & Natural Resources  
Office of Conservation & Coastal Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2005 JUL 26 A 8:46  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Attn: Sam Lemmo

Re: David & Mary Carroll Residence  
95-4667 Hawaii Belt Highway  
Naalehu, Hawaii 96772

Tmk: 3<sup>rd</sup> 9-5-016: 036  
Case #: HA 3002

Completion of Dwelling &  
Telephone Conversation with Tiger regarding Entry Gate Structure

Dear Mr. Lemmo;

As requested by your staff, I am writing to inform you that the dwelling for the Carroll's has been completed and pending the County of Hawaii final inspection following your staff report and recommendation for the Entry Gate Structure submitted January 2005 for your review. Although the gate was added during construction, it is evident the lava rock face and dark brown gate have a clear effect of helping blend in nearly one-half of the façade with the surrounding landscape.

During your site visit several items were discussed. In particular, I'd like to note that the "Sears" shed that was used during construction has been removed; the landscaping had been installed over six months ago and is slowly growing; the elements – such as effects of the sun and wind carried dust – have weathered the house. These things have increased the visual compatibility of the house with it's surroundings. The Carroll's chose an earth tone color, rather than the one they had originally wanted.

As discussed during your visit and again this morning with Tiger, the spiral staircase and associated tower was removed due to a County of Hawaii requirement which made the stairway redundant. Any space greater than 400 square feet must have a "conventional" stair as an exit. This was added between the Family room and Garage. We felt that the spiral stair, and tower, roof, and spire, could be deleted and lessen the overall "multi-roof" appearance of the home. The living spaces were brought closer together as a result to become one structure.

A side note may be interesting. Even plants indigenous to the area have proven to be very difficult to grow. Only the native species can survive the harsh environment and persistent winds. The courtyard created by the proposed Entry Gate structure and stacked stone walls has been a help but the addition of a connecting element between the Family Room/ Guest Bedrooms and the Pavilion may be necessary to further reduce the wind tunnel effect and better visually connect the spaces. A recommendation such as a double lattice windscreen to visually and structurally join these structures would be welcome.

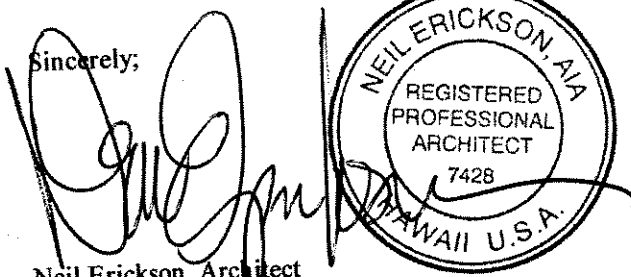
EXHIBIT 12

**Neil C. Erickson, Architect**  
82 Ponahawai Street, Hilo, Hawaii 96720

Telephone: (808) 969-4945

We look forward to staff recommendations regarding the entry. If you have any questions or concerns please don't hesitate to contact me. Thank you.

Sincerely;



Neil Erickson, Architect  
Hawaii Lic. # AR-7428

THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION AND  
CONSTRUCTION OF THIS PROJECT  
WILL BE UNDER MY OBSERVATION.

Cc: Carroll  
Lim - Carlsmith



EXHIBIT 13



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

P.O. BOX 621  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Ref.:PB:TC

File No.:CDUA HA-3002B

JUL - 6 2001

Mary and David Carroll  
603 Winsford Rd.  
Bryn Mawr, PA 19010

Dear Mrs. & Mr. Carroll,

Subject: Conservation District Use Application (CDUA) No. HA-3002 for the Construction of  
a Single Family Residence at Kaalaiki and Hokukano, Kau, County of Hawaii, TMK  
3<sup>rd</sup> 9-5-16:36

Department staff has reviewed your proposed building plans. While, the structure does appear to consist of somewhat separated living units, this design will be considered sufficiently integrated to receive preliminary approval of the design. The only change required would be the deletion of the wet-bar sink in the living room of the living area behind the garage. Our concern is that the wet-bar area, with a sink, could be easily transformed into a kitchen. This permit is for construction of a single-family-residence, and pursuant to Chapter 13-5, Hawaii Administrative Rules, Exhibit 4, single-family-residences have only one kitchen. "Kitchen means a facility within the residential dwelling for food preparation, including fixtures, appliances or other devices to wash, prepare, heat, cook, and refrigerate food and wash cooking utensils and dining implements."

We would also like to remind you that Condition 6 of your approval requires the submittal of building plans for the Department's final approval.

Should you have any questions regarding this matter please contact Traver Carroll our planning staff at (808) 587-0439.

Aloha,

Harry Yada, Administrator  
Land Division

cc: Hawaii Board Member  
County of Hawaii, Department of Planning  
Mr. Steven Lim, Carlsmith Ball, 121 Waiianuenue Ave., Hilo, HI 96720

**EXHIBIT 14 1**

ENLARGED SITE PLAN  
SCALE: 1" = 10'-0"

Approved  
Plans

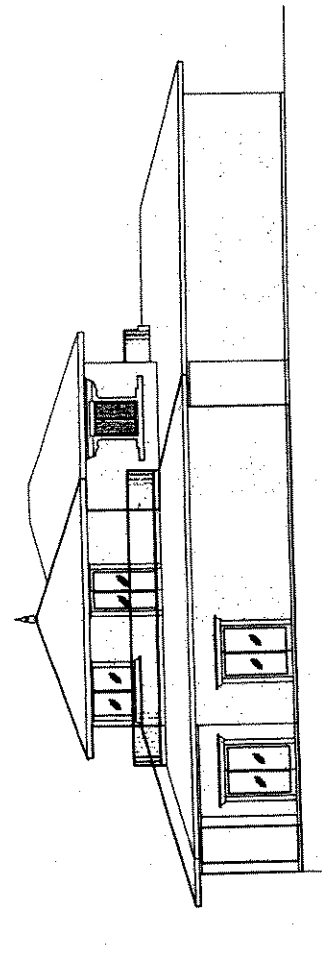
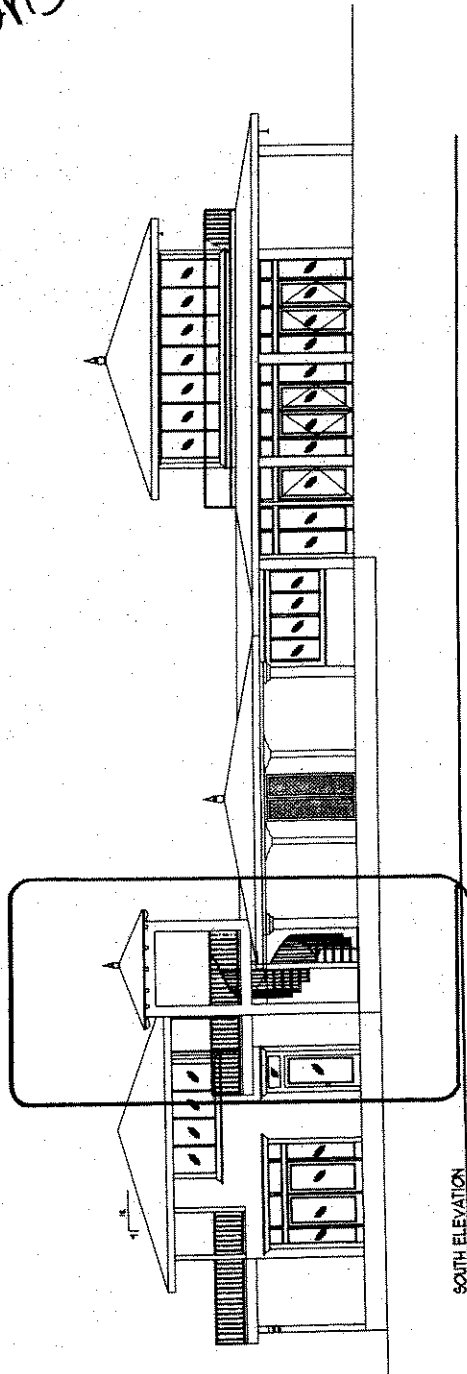


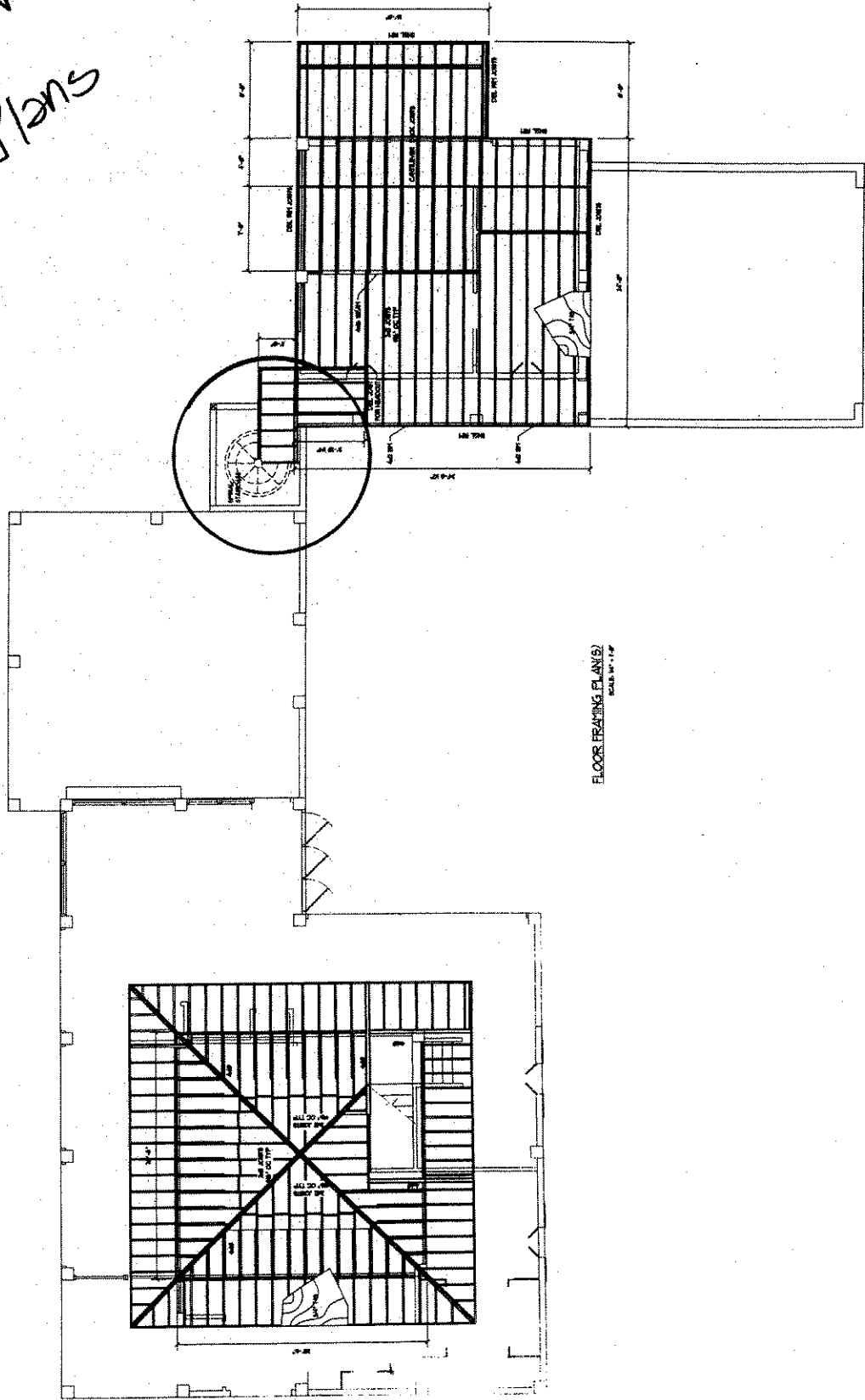
EXHIBIT 16





•

Approved  
Plans



	<p><b>REPORT MADE AT:</b></p> <p><b>DIVISION:</b></p> <p><b>SUBJECT:</b></p>	<p><b>DATE OF REPORT:</b></p> <p><b>PERIOD FOR WHICH MADE:</b></p> <p><b>REPORT MADE BY:</b></p>	<p><b>TITLE:</b></p>		<p><b>CHARACTER OF CASE:</b></p>	<p><b>NAME AND ADDRESS OF PERSON OR FIRM TO WHOM REFERRED:</b></p>
--	--	--	----------------------	--	----------------------------------	--



**EXHIBIT 19**

SEBASTIAN J. CAVETANO  
GOVERNOR OF HAWAII



TIMOTHY E. JONES, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCES

DEPUTIES  
JANET E. KAWLOU  
LARRY NICHOLSON

RECEIVED  
LAND DIVISION

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kauai House Building, Room 556  
801 Kamoku Boulevard  
Kapolei, Hawaii 96707

NOV -9 P2 54

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

2001 JAN -3 A 8:57

November 3, 2000

DEPT. OF LAND &  
NATURAL RESOURCES  
Steven S.C. Lim  
CARLSMITH BALL  
HAWAII

75-1000 Henry Street, Suite 209  
Kailua-Kona, Hawaii 96745

LOG NO: 26418 ✓  
DOC NO: 0010ms04

Dear Mr. Lim:

SUBJECT: Historic Preservation Comments on Proposed Single Family Residence  
Hokukano and Kaalaiki, Ka'u, Hawaii Island  
TMK: (3)9-5-16:36

Thank you for the opportunity to review this project, and accompanying Historic Preservation Division staff archaeologist Marc Smith on the July 19, 2000 site inspection.

It is our understanding that your client wishes to build a single family residence in the parcel on a previously graded house pad. The site inspection confirmed the house pad and access road are located at the northwest (*māuka*) margin of the parcel, at an elevation of approximately 80 feet above sea level. The access road and pad, which are located on the leading edge of an *a'a* lava flow, have been graded in the past. The southeast (*makai*) edge of the graded house site drops off steeply to a level *pahoehoe* flow that continues on to the shoreline, approximately 850 feet away.

There are known significant archaeological sites located in the parcel. These include the government beach trail running along the coast, platforms and mounds adjacent to the trail, and habitation sites near Kawa springs located just north of the parcel along the shoreline. Before approving any additional land altering activity in the parcel, we would recommend an archaeological inventory of the parcel.

We believe a house could be constructed on the existing house pad on the condition that there is no additional grading work conducted off the existing pad and access road. If your client agrees to the above condition, then the proposed action will have "no effect" on significant historic sites. In the future, if the parcel is developed, an archaeological inventory survey would be requested by our office prior to any permit approvals. If you have further questions please call Pat McCoy at 692-8029 (Honolulu), or Marc Smith at 933-0482 (Hilo).

Aloha,

DON HIBBARD, Administrator  
State Historic Preservation Division

MS:jk

c: Virginia Goldstein, County of Hawaii Planning Department

Post-it* Fax Note	7671	Date	1/3/01	# of pages	1
To	ENC Hill				
Co./Dept.	Co.				
Phone #	Phone #				
Fax #	Fax #				

EXHIBIT 20

EXHIBIT 15  
DLNR-SHPD LETTER



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Ref.:PB:EAH

File No.:CDUA HA-3002B

SEP 11 2000

Naalehu Public Library  
P. O. Box 653  
Naalehu, HI 96772

Dear Librarian,

SUBJECT: DRAFT ENVIRONMENTAL ASSESSMENT AND CONSERVATION DISTRICT  
USE APPLICATION (Board Permit) HA-3002 By Mary and David Carroll For A  
Single-Family Residence With Accessory And Related Improvements At Kaalaiki  
and Hokukano, Kau, County of Hawaii, TMK(3)9-5-16:36

Enclosed please find two copies of the draft EA for the subject project. We are providing these documents pursuant to the Environmental Impact Statement rules [Section 11-200-9 (b)(6), Hawaii Administrative Rules], which require that one copy of the draft EA be deposited at the nearest state library in each county in which the proposed action is to occur. We are providing two copies to facilitate public review and comment.

Please make this information readily available to those people who may wish to review it. Also, if possible, please advise that written comments regarding the project must be postmarked by **October 23, 2000**, and should be mailed to: **Department of Land and Natural Resources, Land Division, Planning Branch, P.O. Box 621, Honolulu, Hawaii 96809.**

Should you have any questions on this matter, please contact Eric Hill of our planning staff in Honolulu at (808)587-0380.

Sincerely,

Dean Y. Uchida, Administrator

c. Hawaii Board member  
OEQC

EXHIBIT 21

# CARLSMITH BALL LLP

ATTORNEYS AT LAW  
A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANALENE AVENUE  
P.O. BOX 686

HILO, HAWAII 96721-0686  
TELEPHONE (808) 935-6644 FAX (808) 935-7975  
WWW.CARLSMITH.COM

November 7, 2000

Mary Amuro  
P.O. Box 216  
Naalehu, HI 96772

Re: Applicants: Mary & A. David Carroll; CDUA HA-2981B  
Kalaiki and Hokukano, District of Kau, County and State of Hawaii; TMK:(3) 9-5-16:36

Dear Ms. Amuro:

We are in receipt of a document that you signed indicating that you have concerns about the proposed construction by the Applicants of a two-story, single-family residential dwelling, approximately 3,150 square feet in living area, and related accessory use improvements (man-made reflection pond, gravelled driveway, private water catchment and wastewater treatment systems), and landscaping on approximately 3/4-acre at the mauka/northwest end of the 47.425-acre coastal property. See attached site plan.

The proposed house site is on the formerly graded house pad at the mauka end of the Property, approximately 824 feet from the shoreline. DLNR's Historic Preservation Division has inspected the site and given a verbal clearance for this development. DLNR has also directed that no further development may occur on the remaining makai portion of the Property without further archaeological survey of the area. The County of Hawaii recognizes a mauka-makai public access which starts at the Honuapo and Hionaa ahupua'a (located south of the Property) from the Hawaii Belt Road and gradually traverses diagonally through the Property along the pedestrian Government Beach Trail. Therefore, lateral pedestrian public access to and along the coastal shoreline within the Project Area will remain open.

You are invited to attend an Informational Meeting regarding the Conservation District Use Application as follows:

DATE: Sunday, November 12, 2000  
TIME: 1:00 p.m.  
PLACE: Property site, approximately 2 miles north of Honuapo Park (Whittington Beach Park)

In recognition of the recent flooding that has affected many people in this area, we will hold a second Informational Meeting on Tuesday, November 14, 2000 at 6:30 p.m. at the Naalehu Community Center.

Should you have questions concerning the Informational Meetings or continue to have additional questions concerning the proposed action, please feel free to contact me. Your letter and this response will be appended to the final environmental assessment to ensure that the document adequately addresses pertinent development and environmental issues.

Very truly yours,

STEVEN S. C. LIM

SSL:KYL  
xc: Mary & A. David Carroll  
Eric Hill, DLNR-Land Management  
Honolulu, HI  
Kailua, HI  
Kona, HI  
Maui, HI  
Guam, HI  
San Juan, HI  
Los Angeles, HI  
Washington, D.C.  
Mexico

# CARLSMITH BALL LLP

ATTORNEYS AT LAW  
A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANALENE AVENUE  
P.O. BOX 686

HILO, HAWAII 96721-0686  
TELEPHONE (808) 935-6644 FAX (808) 935-7975  
WWW.CARLSMITH.COM

November 7, 2000

Vernon Takaki  
P.O. Box 36  
Naalehu, HI 96772

Re: Applicants: Mary & A. David Carroll; CDUA HA-2981B  
Kalaiki and Hokukano, District of Kau, County and State of Hawaii; TMK:(3) 9-5-16:36

Dear Mr. Takaki:

We are in receipt of a document that you signed indicating that you have concerns about the proposed construction by the Applicants of a two-story, single-family residential dwelling, approximately 3,150 square feet in living area, and related accessory use improvements (man-made reflection pond, gravelled driveway, private water catchment and wastewater treatment systems), and landscaping on approximately 3/4-acre at the mauka/northwest end of the 47.425-acre coastal property. See attached site plan.

The proposed house site is on the formerly graded house pad at the mauka end of the Property, approximately 824 feet from the shoreline. DLNR's Historic Preservation Division has inspected the site and given a verbal clearance for this development. DLNR has also directed that no further development may occur on the remaining makai portion of the Property without further archaeological survey of the area. The County of Hawaii recognizes a mauka-makai public access which starts at the Honuapo and Hionaa ahupua'a (located south of the Property) from the Hawaii Belt Road and gradually traverses diagonally through the Property along the pedestrian Government Beach Trail. Therefore, lateral pedestrian public access to and along the coastal shoreline within the Project Area will remain open.

You are invited to attend an Informational Meeting regarding the Conservation District Use Application as follows:

DATE: Sunday, November 12, 2000  
TIME: 1:00 p.m.  
PLACE: Property site, approximately 2 miles north of Honuapo Park (Whittington Beach Park)

In recognition of the recent flooding that has affected many people in this area, we will hold a second Informational Meeting on Tuesday, November 14, 2000 at 6:30 p.m. at the Naalehu Community Center.

Should you have questions concerning the Informational Meetings or continue to have additional questions concerning the proposed action, please feel free to contact me. Your letter and this response will be appended to the final environmental assessment to ensure that the document adequately addresses pertinent development and environmental issues.

Very truly yours,

STEVEN S. C. LIM

SSL:KYL  
xc: Mary & A. David Carroll  
Eric Hill, DLNR-Land Management  
Honolulu, HI  
Kailua, HI  
Kona, HI  
Maui, HI  
Guam, HI  
San Juan, HI  
Los Angeles, HI  
Washington, D.C.  
Mexico

EXHIBIT 22

# CARLSMITH BAIL LLP

ATTORNEYS AT LAW  
A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE  
P.O. BOX 686  
HILO, HAWAII 96721-0686  
TELEPHONE (808) 935-6644 FAX (808) 935-7975  
WWW.CARLSMITH.COM

November 30, 2000

: Carroll Proposed Residence at Hukukano, Kau, Hawaii; TMK: (3) 9-5-16:36

Interested Parties:

This will report on our site visit to the property held on November 12, 2000 at 1:00 p.m., and a public informational meeting held at the Naalehu Community Center on Tuesday, November 14, 2000 between 6:30 p.m. until approximately 8:30 p.m.

The November 12<sup>th</sup> site visit consisted primarily of project orientation and description of the proposed residence on top of the existing graded house pad at the mauka end of the property. There were approximately ten attendees, plus Mary Carroll and myself. For those of you who were not on the original petition list, we are enclosing a copy of the original meeting notice and site plan for your information.

At the public informational meeting held on November 14<sup>th</sup>, there were approximately 25 to 30 attendees, including Mary Carroll and myself. After the project presentation and site orientation, we solicited comments from the community which fell into the following general categories: 1) the Carrolls do not own the fee title to the subject property because the Crown Lands are owned by all the people of the Kingdom of Hawaii; 2) the project site is a sacred site which was used for navigational training, spiritual healing and/or contains burials in undisclosed locations within the property; and 3) if the project is allowed to go forward, the CDUA house permit will serve as a precedent for increased development on the surrounding properties in the Kau region. We will incorporate these comments into the Final Environmental Assessment.

As we discussed at our November 14<sup>th</sup> meeting, the next step is finalization of the Environmental Assessment and filing with the Office of Environmental and Quality Control ("OEQC") and the State Board of Land and Natural Resources. Assuming that the final Environmental Assessment is approved, the BLNR will take action on the CDUA for the house at a public hearing. We will inform you by mail of the date, place and time of that public hearing so that you may attend and give your comments.

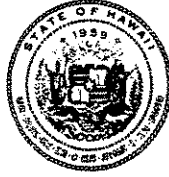
On behalf of Mr. and Mrs. Carroll, I would like to thank you for your participation in the process. Please call me if you have any comments or questions on this matter.

Very truly yours,

  
STEVEN S.C. LIM

EXHIBIT 23

DL:bny  
: Mary Carroll  
DLNR - Eric Hill  
Robert D. Triantis, Esq.  
Honolulu, Hawaii  
Hilo . Kona . Maui . Guam . Saipan . Los Angeles . Washington, D.C. . Mexico



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809  
JAN 10 2001

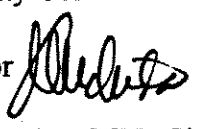
AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Ref.:PB:EAH

File No.: CDUA HA-3002

MEMORANDUM

To: Genevieve Salmonson, Director  
Office of Environmental Quality Control

From: Dean Y. Uchida, Administrator 

Subject: Negative Determination and Finding Of No Significant Impact: Final Environmental Assessment by Mary and David Carroll For a Single-Family Residence with Accessory and Related Improvements At Kaalaiki and Hokukano, Kau, County of Hawaii, TMK 3<sup>rd</sup> 9-5-16:36

The Department of Land and Natural Resources, Land Division, has reviewed the comments received during the 30-day public comment period, which began on September 23, 2000 and the subject EA. The project road and house would be constructed on a previously graded historic lava flow. Coastal marine food gathering is practiced in the project shoreline area. Significant archeological resources, including: trail, platform, mound, habitation and possible burial sites, occur on the property. According to the applicant, work will only be conducted on the previously graded areas over 800 feet from the shoreline and, therefore, will not impact cultural resources at the subject location.

We have determined that the subject project will not have significant environmental effects and hereby issue a Finding of no Significant Impact (FONSI) for the subject EA. Please publish notice of this in the January 23, 2001 OEQC Environmental Notice.

We have enclosed a completed OEQC Publication Form and four copies of the final EA. My staff will e-mail a completed publication form to your office shortly. Please contact Eric Hill of our planning staff at 587-0380 if you have any questions.

c. Hawaii Board Member

EXHIBIT 24





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Ref.:PB:EAH

JAN 11 2001

File No.:CDUA HA-3002B

Pahala Public & School Library  
P.O. 400  
Pahala, HI 96777

Dear Librarian,

Subject: Finding Of No Significant Impact (FONSI): Final Environmental Assessment (EA) for Conservation District Use Application (CDUA) HA-3002 by Mary and David Carroll for a Single-Family Residence with Accessory and Related Improvements at Kaalaiki and Hokukano, Kau, County of Hawaii, TMK 3<sup>rd</sup> 9-5-16: por. 36

Notice of the subject Finding Of No Significant Impact (FONSI) will be published in the January 23, 2001 issue of the Environmental Notice. Therefore, the public challenge deadline for the subject project will occur on February 22, 2001. Enclosed, please find one copy of the final EA for the subject project, which we are providing to facilitate public review. Please make this information readily available to those people who may wish to review it.

Although it has not been scheduled, it is possible that the Board of Land and Natural Resources may hold a hearing in Honolulu on February 9, 2001 for the subject CDUA. If possible, please advise that additional written comments regarding the subject CDUA, HA-3002, may be mailed to: Department of Land and Natural Resources, Land Division, Planning Branch, P.O. Box 621, Honolulu, Hawaii 96809.

Should you have any questions on this matter, please contact Eric Hill of our planning staff in Honolulu at (808) 587-0380.

Sincerely,

  
Dean Y. Uchida, Administrator

c. Hawaii Board member  
OEQC

EXHIBIT 25



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Ref.:PB:EAH

JAN 11 2001

File No.:CDUA HA-3002B

Naalehu Public Library  
P.O. Box 653  
Naalehu, HI 96772

Dear Librarian,

Subject: Finding Of No Significant Impact (FONSI): Final Environmental Assessment (EA) for Conservation District Use Application (CDUA) HA-3002 by Mary and David Carroll for a Single-Family Residence with Accessory and Related Improvements at Kaalaiki and Hokukano, Kau, County of Hawaii, TMK 3<sup>rd</sup> 9-5-16: por. 36

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Sincerely,

Dean Y. Uchida, Administrator

c. Hawaii Board member  
OEQC

EXHIBIT 26

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division, Planning Branch  
Honolulu, Hawaii

File No.: CDUA HA-3002B  
180-Day Exp. Date: February 24, 2001

February 23, 2001

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**REGARDING:** Conservation District Use Application (CDUA) No.  
HA-3002 for the Construction of a Single Family  
Residence at Kaalaiki and Hokukano, Kau, County  
of Hawaii, TMK 3<sup>rd</sup> 9-5-16:36

**APPLICANT:** Mary and David Carroll  
603 Winsford Rd.  
Bryn Mawr, PA 19010

**LANDOWNER:** Same

**LOCATION:** Kaalaiki and Hokukano, Kau, County of Hawaii

**TMK:** (3)9-5-16:36 (Lot B-2)

**AREA OF USE:** 17,692 square feet

**AREA OF  
PARCEL:** 47.5 Acres

**SUBZONE:** General

**DESCRIPTION OF AREA AND CURRENT USE:**

The subject unimproved oceanfront property is located approximately two miles North of Honuapo Park (Whittington Beach Park), at Kaalaiki and Hokukano, Kau, Hawaii (**Exhibits 1-4**). The conservation district in the specific area of the subject site, South of Punaluu, extends to the Hawaii Belt Road. The property is surrounded by lands in the conservation district Limited, Resource and General Subzones (**Exhibit 2**). There are

*As Amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

*February 23, 2001. [Signature]*

ITEM D-10

**EXHIBIT 27**

approximately 12 lots within this immediate conservation district area contained wholly within the conservation district.

Along the shoreline of the Big Island, from South point to just past Pahala at the Hawaii Volcanoes National Park, the location of the conservation district boundary varies, but generally extends not more than 500 feet inland from the coast. This general coastal Kau area is dominated by very large agricultural lots.

The subject 47.5 acre lot, lot B-2, is located within the General Subzone of the State Land Use Conservation District at Hokukano, Kau, County of Hawaii. The subject lot is the result of a consolidation and resubdivision of two adjacent lots. The consolidation and resubdivision was approved by departmental Conservation District Use Permit (CDUP) HA-2923 on July 26, 1999. Lot B-1, TMK parcel 41, is located at the Southern border of the subject parcel adjacent to the ocean.

According to the applicant, the area proposed for the single family residence and access road has been previously graded. There are no present structures on the property. Three to four fresh water springs exist at the Northern side of the property (**Exhibit 5**). The remains of a rock wall and cattle fencing border the property on its Northwest and Northern boundaries. According to the applicant, a government beach trail, approximately 15 feet wide, runs from Hawaii Belt Road lateral to the shoreline and across the property. Other four wheel drive routes exist on the property.

According to the applicant, the elevation of the property ranges from sea level to 100 feet above sea level. The overall slope of the property is approximately 0 to 6%. Billowy pahoehoe basalt outcrops dominate the topography of the property. The proposed residence site is located outside of the 500 year flood plain. The property has minimal soil and is not well suited for agriculture. According to the applicant, 5% of the subject property area has been covered by lava in "historical" times, but there is no great risk of further lava inundation. According to the applicant and HSS Plat 124 (**portion of HSS Plat 124, Exhibit 6**), a raised Aa flow extends into the property at the location of the proposed residence.

According to the applicant, electrical and telephone infrastructure exist along Hawaii Belt Road, but the nearest public water system well is 4.3 miles away, and therefore, there is no water service available at the subject location. In the subject area, rainfall averages approximately 70 inches per year.

According to the applicant, no known protected species occur on the property. The predominant vegetation species include koa haole, kiawe, guinea grass, ilima, milo and naupaka. The Aa lava outcrop is bare of vegetation.

The surrounding land is vacant or may be used for animal grazing as a non-conforming use. However, the subject property is not currently used for grazing.

#### Historic and Archaeological Resources

According to the applicant, the area proposed for the single family residence and access road has been previously graded. The applicant maintains that the only significant archaeological sites on the property, house sites, are located far from the proposed residence site and near the freshwater springs at the Northern portion of the property. According to the applicant, other archaeological sites on the property are important only for information content. According to the applicant, due to the previous grading there are no archaeological sites, burials or burial remains still located at the proposed construction site.

The department does have limited rudimentary archaeological information included in CDUA File No. HA-1065, which indicates, of the two areas surveyed, that there were many archaeological sites on the property in the late 1970s. The sites identified included housesites, platforms, cave shelters, burials, agricultural structures, walls, rock piles, shelters, as well as sites of which no description was given. The rudimentary surveys were limited to an area Makai of the proposed residence site (**Exhibit 7**) and at the Northern side of the property (**Exhibit 8**) and do not indicate the historic or archaeological significance of sites.

Prior to making application around 1978, the previous landowner graded the proposed house site and access road at the Aa lava

outcrop without authorization. In 1977, according to the County of Hawaii, Historic Site No. 4375, consisting of approximately nineteen burial sites, which was nominated to the Hawaii Register of Historical Places, was destroyed. A departmental investigative report dated July 7, 1978 indicates that there was an "ancient cemetery" at the Aa lava outcrop and that numerous grave sites remained along the edge and embankments of the Aa flow outcrop both in front (to the West, Mauka) and behind (to the East, Makai) of the proposed residence site. The report also indicates that historic trails, in addition to the Government Beach Trail, existed on the property. The 1978 investigative report also indicates that the burials on the West property boundary, which existed in 1978, are also located on state land Mauka of the proposed residence site. In conducting this work the previous landowner:

1. Graded a roadway from the Hawaii Belt Road to the Aa lava outcrop and covered it with red cinder;
2. Graded the Aa lava outcrop and made a "reservoir" area;
3. Graded three or more other roadways, possibly historic trails, Makai of the Aa lava outcrop, including the Government Beach Trail; and
4. Blocked access onto the Government Beach Trail at the South side of the property.

The 1978 investigative report recommended disapproval of the 1978 CDUA until a historical report could be prepared.

A previous landowner conducted the unauthorized grading at the property in the 1970s. Areas, including the proposed residence and access road sites, were graded. At the time, 1978, staff did not recommend the previous landowner be fined, as the party was apparently unaware of conservation district zoning permit requirements. On November 22, 1978, the Board approved staff's recommendation regarding the CDUA for residence use and stock grazing on the subject property (CDUA HA-1065):

Denial, without prejudice, on the basis that the SMA clearances from the County of Hawaii, pursuant to the

provisions of Chapter 205A-29(d), HRS, have not been executed.

In the event that the County denies the SMA permit, the applicant shall restore the area to its previous undisturbed condition. Should the County approve the SMA, the applicant shall resubmit the SMA with the CDUA for action.

On November 29, 1978, the previous landowner obtained Special Management Area Permit No. 79 to allow road grading; construction of a water reservoir, fence, ranch quarters building, a windmill; digging a well; installation of a water line and electric service poles, leveling of approximately 12 acres of land; and landscaping. The SMA permit was made subject to several conditions, including: removal of rocks on the "old government road", public pedestrian access to the shoreline along the petitioner's access road from Hawaii Belt Road, no grading of an area occupied by two platforms which abut the Aa bluff and prior Conservation District Use Permit approval.

**DESCRIPTION OF PROPOSED USE:**

The location of the proposed residence is approximately 825 feet from the shoreline. The applicant proposes to construct a two story, single family residence, including: a man made reflection pond, graveled driveway, private water catchment system and private wastewater treatment system and to engage in landscaping (Exhibit 9).

The existing 12,800 square foot cinder, rock and grass driveway would be graveled. Minimal grading would occur. Likewise, construction of the 711 square foot man made reflection pond would involve minimal grading. The proposed residence and accessory uses would consist of 4,892 square feet of developed floor area. The proposed residence's second floor is included in the total. The main house would have three bathrooms.

A separate, but breezeway connected two story living area of 1025 square feet for family and guests of the applicant would be constructed. An approximately 12 foot by 8 foot "bar" area is identified on the second floor of this separate living area. The separate living area would have two bathrooms. The applicant

identifies the separate guest residence as "an attached South wing living area" designed to "provide a separate, but connected living area for family and guests of the applicants" that "will not be used for any caretaker's cottage or rental use.

Landscaping would include the replacement of existing weed species and include the planting of pohinahina, akia, hinahina kukahakai, mao, naupaka kahakai, nehe, wiliwili, ilima, aalii and ulei. The final landscaping plan, which will depend in part on the availability of planting materials at the time of construction, will be submitted at a later date.

The total area proposed to be occupied by all improvements, including landscaping, but excluding the graveled driveway, is approximately  $\frac{1}{4}$  acres.

The entire residence, with the separate living area, is proposed to have five bathrooms.

The applicant calculates that four persons, an average occupancy rate in a family residence, would require 200 gallons of water per day, and that an average of 246 gallons of water per day would be available from the catchment and water storage system. The calculation is based upon an average annual rainfall of approximately 70 inches. However, rainfall is seasonal, in times of low rainfall, water may be trucked in to fill the water storage tank.

#### PROJECT ALTERNATIVES:

1. No Action:

Disapproval of the subject request is the equivalent of no action;

Alternative locations of the proposed residence are not considered. In response to a comment regarding alternatives for the proposed use identified in the project's environmental assessment, the applicant replies that the "No Action" alternative is a reasonable alternative.



**SUMMARY OF COMMENTS:**

This application was referred to the divisions of Historic Preservation, Conservation and Resources Enforcement, Na Ala Hele and the Land Division's Hawaii District Land Office for review and comment. The application was also referred to the state Department of Health, Office of Hawaiian Affairs and the County of Hawaii, Planning Department for review and comment.

Relevant agency comment and other comment regarding the application and its environmental assessment are summarized below.

**DEPARTMENT OF LAND AND NATURAL RESOURCES:**

**Historic Preservation:**

The Historic Preservation Division reports that a site inspection has verified that the subject property does contain a previously graded access road and house pad located on the leading edge of an Aa lava flow. Also, the division reports that:

There are known significant archaeological sites located in the parcel. These include the government beach trail running along the coast, platforms and mounds adjacent to the trail, and habitation sites near Kawa springs located just North of the parcel along the shoreline. Before approving any additional land altering activity in the parcel, we would recommend an archaeological inventory of the parcel.

We believe a house could be constructed on the existing housepad on the condition that there is no additional grading work conducted off the existing pad and access road. If no work is done off the existing pad, then the proposed action will have "no effect" on significant historic sites. In the future, if the parcel is developed, an archaeological inventory survey would be requested by our office prior to any permit approvals.

Staff conferred with Historic Preservation staff in this matter and does understand that grading in the late 1970s destroyed the

burials at the subject location. The recent site visit by and letter from the Historic Preservation Division indicates that work may proceed. Staff understands that burial remains may exist adjacent to proposed construction site areas, but are not likely to be impacted by the construction.

In regards to the proposed use, at this time, staff would recommend that if any burial remains or archaeological sites are encountered during construction, that the applicant be required to contact the Historic Preservation Division and take appropriate actions. While, the present staff recommendation contradicts the recommendation of the 1978 investigative report (by not recommending an archaeological survey prior to construction at the disturbed site), staff is of the opinion that the present recommendation of Historic Preservation should be followed at this time.

Staff understands that Historic Preservation staff, in conducting its review, was unaware of 1970s unauthorized grading outside of the proposed construction area. Staff has notified Historic Preservation staff of the extended grading, but HPD staff have no further comment or suggestions related to how any restoration work could be conducted on the property.

Staff understands that grazing may be conducted in the surrounding area, but is not known to be conducted on the subject property. If animal grazing did occur on the subject property, staff would be inclined to respectfully propose to further condition this permit to restrict grazing in order to protect archaeological features present.

**Na Ala Hele:**

No objections so long as the Government Beach Trail, as depicted on tax maps, is not adversely impacted in any way.

Staff also conferred with Na Ala Hele program staff regarding the 1970s grading of the property. Na Ala Hele program staff has made a site visit to the subject property at the area of the proposed residence and confirms that road grading took place on areas on the property outside of the proposed construction site. While the Southern area of the property was not inspected, Na Ala Hele program staff reports that there is no reason to

believe that the Government Beach Trail remains blocked on the Southern side of the property. At this time, Na Ala Hele program staff does not have any suggestions related to how any restoration work could be conducted on the property.

STATE OF HAWAII:

Office of Hawaiian Affairs:

Every mitigative effort must be taken to prevent any possible contamination to the fresh water springs and to prevent any harm to the archaeological remains of the nine structures around the several freshwater springs located in the Northern portion of the property.

Applicant Response:

No development will occur anywhere near the springs.

Department of Health:

The subject property is located in a critical wastewater disposal area as determined by the Hawaii County Wastewater Advisory Committee. As there is no existing sewer service in the area, we recommend approval of the project, subject to Department of Health approval for wastewater treatment system plans.

Applicant Response:

Details of the private wastewater system are not yet developed, however, the system utilized will meet all applicable county and state regulations. The location of the proposed wastewater system will not involve commitment to loss or destruction of any coastal resources.

Staff understands that the standard condition which requires the approval of the Department of Health for the proposed private wastewater treatment system would apply.

**Board of Land and  
Natural Resources**

**CDUA No.: HA-3002B**

**COUNTY OF HAWAII:**

**Planning Department:**

The subject property is located within the Special Management Area, but the use proposed here is exempt from the SMA definition of development. No work is proposed within the shoreline setback.

**OTHER COMMENT:**

**PETITION:**

The applicant and department received a petition from 155 Kau, Hawaii residents opposing the subject development within conservation land and calling upon the Board to deny the subject application. In the petition, the petitioners state that the proposed use "will have negative affects on our traditional and cultural ties to the aina, relative to Kau."

**Applicant Response:**

The applicant invited all petitioners, by letter, to an informational meeting at the property and another informational meeting at the Naalehu Community Center both in November, 2000.

The applicant notified all petitioners and the department of certain comments received at the informational meetings. The applicant reported that comments from the community included:

Applicant Informational Meeting Comment: 1) The applicant does not own the fee title to the subject property because the Crown Lands are owned by all Kanaka Maoli, and pursuant to the Law of Nations pact, no fee title can be acquired during this time of truce in the war;

Applicant Informational Meeting Comment: 2) The project site is a sacred site which was used for navigational training, spiritual healing and contains burials in undisclosed locations within the property; and

Applicant Informational Meeting Comment: 3) If allowed to go forward, the CDUA house permit will serve as a precedent for

increased development of the surrounding properties in the Kau region.

In regards to the comment related to the precedent setting nature of the application, staff agrees. If the proposed residence were to be approved, it would be the first residence approved within the coastal area at Kau, Hawaii. Planning Branch records indicate that there are only two approved residence uses within the conservation district at tax Zone 9, District of Kau. The two residences are permitted non-conforming uses located at Volcano adjacent to the Puna District. However, other non-conforming residence use may occur at Kau. No residence use, except possible non-conforming use, is presently authorized within the shoreline conservation district area of the District of Kau.

At the subject coastal Kau, Hawaii location, the entire lot is zoned conservation. While other uses of the subject location may be made besides residence use, staff is of the opinion that allowing the subject residence use, if it is not detrimental to cultural or natural resources, is appropriate and while other uses of the property may be made, allows the owner reasonable use of his property. This is due to fact that the subject lot is zoned entirely within the conservation district. If the lot were split zoned, staff would be inclined to analyze alternative house site locations further.

The subject coastal Kau, Hawaii conservation district location is generally a rugged, rural landscape and, except for cattle grazing, is generally untouched by development. The proposed use will impact views of the largely untouched, rugged, rural, and archaeologically rich coastal landscape inland from the coast. Views enjoyed by boaters and coastal trail users will be impacted. The area is not a scenic mountainside resource for an urban area.

Staff is of the opinion that since lots entirely within conservation district at Kau, Hawaii are generally large, the subject lot is 47.5 acres, the proposed use would set an acceptable precedent for impacts upon the coastal landscape.

**CULTURAL, HISTORICAL AND ARCHAEOLOGICAL RESOURCES:**

In the project's environmental assessment the applicant further reports that area residents have stated: 1) opihi, limu, fish and other coastal strand resources are gathered by Native Hawaiians at the subject property; and 2) it has been contended that the previously graded house pad is located over a burial site.

**Applicant Response:**

Due to the location of the proposed house site away from coastal marine food resources, we anticipate no adverse impacts to the resources as a result of implementing the proposed action.

There are no gates or fences proposed by the applicant that would restrict access for the practice of traditional activities on the property.

Staff agrees with the applicant and is of the opinion that access to coastal marine food resources would not be impacted by the proposed use.

**DAMSELFLIES:**

The fresh water spring located on the property provide habitat for a dwindling population of damselfly, which are unique to the area and selective in breeding customs.

**Applicant Response:**

A series of fresh water springs are located along the extreme Northern portion of the property, approximately 2,500 feet North of the proposed residence site. Recent surveys conducted by the Bishop Museum indicate that the current status of the Hawaiian Megalagrion damselfly species/subspecies may exist in remote sections of Puna or upslope Kau. The proposed development will not involve degradation of the spring ecosystem.

**PROPOSED WATER WELL:**

The department's letter of acceptance for the subject application noted: "If you intend to seek conservation district

**Board of Land and  
Natural Resources**

**CDUA No.: HA-3002B**

zoning approval for the proposed development of a water well, discuss impacts to the springs and other relevant information."

**Applicant Response:**

The applicant may seek Water Commission approval for the construction of a water well to be located below the bluff (Aa lava flow) in the area of the proposed residence approximately 2,700 feet South from the natural springs. Preliminary discussions with CWRM staff indicate that pursuant to guidelines, any production well should be located 1,000 feet from the septic tank.

The applicant briefly refers to a proposed water well in his application and indicates that it may be necessary to construct a well to provide adequate water supply. Staff understands that archaeological surveys have not been conducted for the proposed well area.

**REFLECTION POND:**

Please describe the proposed reflection pond. Is it an existing natural feature? How will the natural environment be changed?

**Applicant Response:**

The natural sloping topography of the area of the proposed man made reflection pond requires minimal grading.

According to CDUA File No. HA-1065, it appears that the site of the proposed reflection pond would be located in an area that was graded and excavated by a previous property owner for a "reservoir". Staff presumes that the pond will be supplied with water from the applicant's proposed catchment system and that more detail about the reflection pond, including whether and how water will be restrained from draining through the Aa lava pond bottom, would be supplied during the construction plan approval process.

**SOUTH WING - GUEST HOUSE:**

Concern has previously been expressed regarding single family residences that appear to be fragmented into two or more

separate structures, a main structure and guest additions, and that such uses should not be permitted. Some have recommended that guest quarters be structurally integrated into the main family residence, and not linked by a covered walkway or breezeway as such structures have the potential to be misused for things such as bed and breakfast units.

**Applicant Response:**

Since the time of the initial application, the applicant has reduced the size of the proposed residence and pond to comply with the administrative rules.

According to the administrative rules, breezeways are not calculated into the developed area. The attached South wing living area is included within the developed floor area and is not a second home and will not be used for any caretaker's cottage or rental use.

Chapter 13-5, HAR, provides for only one kitchen in any single family residence. A kitchen is defined as a facility for "food preparation, including fixtures, appliances or other devices to wash, prepare, heat, cook and refrigerate food and wash cooking utensils and dining implements.

The applicant proposes a 12' by 8' bar area, including a sink and refrigerator in the proposed second guest addition. Staff is of the opinion that the proposed detached guest house has a high potential to be misused as some kind of vacation rental. This potential is increased by the inclusion of the bar area. Staff is also of the opinion that the proposed bar area resembles a kitchen. Staff is of the opinion that the bar area should be removed from any approved use of the separate guest house because it would increase the temptation to use the separate guest house as a vacation rental in the future. Although the applicant maintains that the proposed residence will not be used as a rental, the applicant may not retain ownership of the proposed five bathroom residence in the future.

**ANALYSIS:**

Following review and acceptance for processing, the department has found that:



1. The proposed land use is considered an identified land use within the General Subzone of the Conservation District and is specifically identified under Section 13-5-24(c) (R-8), of the Hawaii Administrative Rules; and
2. No public hearing was required since the use is not of a commercial nature.
3. In conformance with Title 11, Chapter 200, Hawaii Administrative Rules and Chapter 343 Hawaii Revised Statutes, a Finding of no Significant Impact (FONSI) has been filed by the Department with the Office of Environmental Quality Control (OEQC) for the proposed project. Notice of the FONSI was published in the January 23, 2001 OEQC Environmental Notice; and
4. Documentation of the project's compliance with the provisions of Chapter 205A, HRS relating to the Special Management Area (SMA) requirements was found to be complete in a letter from the County of Hawaii, Planning Department, dated September 25, 2000 which states that the subject proposed land uses are exempt from the need to obtain an SMA permit.

The following discussion evaluates the merits of the proposed land use by applying the criteria established in section 13-5-30(c) HAR:

The Proposed Land Use Is Consistent With The Purpose Of The Conservation District:

The purpose of the Conservation District is to regulate land use for the purpose of conserving, protecting, and preserving the important natural resources of the state through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed land use involves development at less than typical urban density and, with staff's recommended conditions, will have a limited impact upon the long-term sustainability of

Conservation District resources. The proposed land use will have no noticeable impact on public health, safety and welfare.

The Proposed Land Use Is Consistent With The Objectives Of The General Subzone:

The objective of the General Subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

The proposed land use will reduce the open space value of the General Subzone of the Conservation District at the proposed location. However, as the Kau area is characterized by large lots and is not immediately adjacent to an existing urban area, staff is of the opinion that the proposed use will have a minimal impact upon open space value.

The Proposed Land Use Complies With The Objectives And Guidelines Contained In Chapter 205A, HRS, Entitled "Coastal Zone Management" Where Applicable:

**Recreational Resources:**

The proposed residential use will not impede public access to or along the shoreline or the Government Beach Trail.

**Historic and Cultural Resources:**

The subject property contains significant historic sites. Staff understands that the proposed residence would be constructed on an area that has been previously disturbed and that no burials or burial remains presently exist at the proposed residence site. With the condition that if burials or burial remains are encountered, the applicant contact the Historic Preservation Division and take appropriate action, staff has no objection to the application.

**Scenic and Open Space Resources:**

The proposed land use will reduce the open space value of the General Subzone of the Conservation District at the proposed location. However, as the area is characterized by large lots and is not immediately adjacent to an existing urban area, staff

is of the opinion that the proposed use will have a minimal impact upon open space value.

**Coastal Hazards:**

The subject parcel lies mauka of the 500 year coastal flood zone. The parcel is located within the tsunami zone. Residence construction within a coastal high hazard zone is an identified use within the conservation district.

The Proposed Land Use Will Not Cause Substantial Adverse Impact to Existing Natural Resources Within the Surrounding Area, Community or Region:

No substantial adverse impact to area resources is anticipated as a result of the proposed land use. No significant long term impacts are anticipated from construction of the single-family residence.

The Proposed Land Use, Including Buildings, Structures, And Facilities, Shall Be Compatible With The Locality And Surrounding Areas, And Appropriate To The Physical Conditions And Capabilities Of The Specific Parcel Or Parcels:

The property does not contribute to scenic mountain views, due to the property's coastal location.

According to the applicant, the proposed use has been designed to harmonize with the existing physical environment. Pedestrian access along the shoreline will not be curtailed since pedestrian public shoreline access is secured along the coastline. The proposed design and location of the residential dwelling and related accessory improvements will ensure that the development is compatible with the visual environment.

Staff has considered that the water supply may be inadequate, especially during dry months, from the proposed water catchment system for the proposed use. Rainfall may possibly be adequate to supply the catchment system during wet months. However, during dry months, approximately April through August, rainfall drops dramatically. During these months it is likely that the applicant would rely upon water hauled in to replenish the water tank.

Staff has considered that the number of proposed bathrooms may be excessive in light of the water supply limitations. However, Staff is uncertain whether additional bathrooms would increase the demand for water and, therefore, reserves a recommendation regarding water supply and the number of proposed bathrooms.

The Existing Physical And Environmental Aspects Of The Land, Such As Natural Beauty And Open Space Characteristics, Will Be Preserved Or Improved Upon, Whichever Is Applicable:

According to the applicant, the proposed use has been designed to harmonize with the existing physical environment. Pedestrian access along the shoreline will not be curtailed since pedestrian public shoreline access is presently secured along the coastline at the Government Beach Trail. According to the applicant, the proposed design and location of the residential dwelling and related accessory improvements will ensure that the development is compatible with the visual environment.

Subdivision of Land Will Not Be Utilized to Increase the Intensity of Land Uses in the Conservation District:

The proposed land use does not include the subdivision of the underlying parcel.

The Proposed Land Use Will Not Be Materially Detrimental to the Public Health, Safety, and Welfare:

Staff is of the opinion that construction of the proposed residence would not be detrimental to the public, health, safety and welfare.

**DISCUSSION:**

Staff is of the opinion that the proposed "South wing, separate, but connected living area" portion of the proposed residence has a high potential use as a vacation rental. Staff is of the opinion that any vacation rental use of the subject property would have an unacceptable impact on the coastal landscape and set an unacceptable conservation district development precedent and, therefore, recommends that the "South wing or separate, but

connected living area" portion of the proposed residence be denied.

Staff further recommends that: 2) the Government Beach Trail not be blocked; 3) development of any water well or other uses on the property receive further Board approval due to historic site concerns.

The applicant briefly refers to a proposed water well in his application and indicates that it may be necessary to construct a well to provide adequate water supply. Staff understands that archaeological surveys have not been conducted for the proposed well area. Therefore, staff is of the opinion that this approval should not include approval for a well, but that the applicant may seek CDUA approval for a well as an amendment to this permit.

The applicant has identified no alternatives to the proposed use other than "No Action". According to the applicant, "no action" is an acceptable alternative. Staff understands that no other locations for the proposed residence on the property were considered. While staff questions whether the proposed location of the residence is advisable, due to the former presence of burials, staff understands that archaeological sites exist throughout the property and that the proposed location, as it has been previously disturbed, is the best alternative disclosed by the applicant.

As reported by the applicant, area residents have stated that the property is a sacred site and development on the property should not be allowed. The applicant has not responded to this comment. However, correspondence from the applicant states that he will notify area residents who have indicated their interest in the subject application of the date, time and place of the decision making Board meeting.

#### 1970s GRADING

The subject property contains significant historic sites. Staff understands that the proposed residence and access road would be constructed in an area that has been previously disturbed and that no burials or burial remains presently exist at the proposed residence site. With the condition that if burials or

burial remains are encountered at the proposed construction site, the applicant contact the Historic Preservation Division and take appropriate action, staff has no objection to the application.

Staff understands that SMA permit no. 79 is not relevant to the subject application as the applicant proposes different land uses than were approved by the 1978 SMA permit. At this time, the County of Hawaii reports that the subject property is located within the Special Management Area, but the present proposed use is exempt from the SMA definition of development. No work is proposed within the shoreline setback.

The Board's action of November 22, 1978 regarding residence and stock grazing use on the subject property (CDUA HA-1065) required SMA clearance and the submission of SMA clearance with subsequent CDUA application. At this time, the applicant has obtained SMA clearance in connection with the subject application and, pursuant to the Board's action of November 22, 1978, need not restore the area to its previous undisturbed condition.

The unauthorized grading at the subject location in the 1970s represented a violation of conservation district law and rule. Staff is of the opinion that the Board's action of November 22, 1978, regarding CDUA HA-1065, resolved violations on the parcel. Staff understands that it was the Board's intention in 1978 to only require restoration of the land if SMA permit or clearance could not be obtained. Such clearance has been obtained in connection with the subject application.

Staff is uncertain whether restoration 1970s grading work on the subject property at this time is advisable. In connection with the subject application, staff considered recommending a requirement for restoration of the land outside of the proposed construction site. Na Ala Hele program and Historic Preservation staff do not propose any such restoration. Therefore, at this time, staff does not recommend a requirement to restore the land outside of the proposed construction site.

**STAFF RECOMMENDATION:**

That the Board of Land and Natural Resources approve Conservation District Use Application (CDUA) No. HA-3002 for the construction of a single family residence at Kaalaiki and Hokukano, Kau, County of Hawaii, TMK 3<sup>rd</sup> 9-5-16:36, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of Chapter 13-5, Hawaii Administrative Rules (HAR), including the standard conditions listed in 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules;
4. The single family dwelling shall not be used for rental or any other commercial purposes;
5. The applicant shall provide documentation (e.g. book and page or document number) that this permit approval has been placed in recordable form as a part of the deed instrument of the legal lot of record, prior to submission for approval of subsequent construction plans;
6. Before proceeding with any work authorized by the department or the board, the applicant shall submit four copies of the construction plans and specifications to the chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set

forth in the permit application. Three of the copies will be returned to the applicant. Plan approval by the chairperson does not constitute approval required from other agencies;

7. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and, unless otherwise authorized, shall be completed within three years of the approval of such use. The applicant shall notify the department in writing when construction activity is initiated and when it is completed;
8. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
9. The applicant understands and agrees that the permit does not convey any vested rights or exclusive privilege;
10. In issuing the permit, the department and board have relied on the information and data which the applicant has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
11. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the board of water supply;
12. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
13. Where any interference, nuisance, or harm maybe caused, or hazard established by the use, the



applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

14. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
15. Cleared areas shall be revegetated within thirty days unless otherwise provided for in a plan on file with and approved by the department;
16. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
17. Access to the Government Beach Trail shall not be blocked;
18. If, during construction, historic sites, burials or burial remains are encountered, construction shall stop immediately, the Division of Historic Preservation notified immediately and appropriate measures approved or required by the department implemented prior to subsequent construction;
19. The single family residence shall not contain any "South wing or separate, but connected living area" or any other similar design;
20. This permit does not include approval for development of a water well. Any water well use, or any other use outside of the access road and residence construction sites shall require an amendment to this permit;
21. Other terms and conditions as prescribed by the chairperson; and
22. Failure to comply with any of these conditions shall render this permit void.

Board of Land and  
Natural Resources

CDUA No.: HA-3002B

Respectfully submitted,



Eric A. Hill,  
Staff Planner



Approved for submittal:

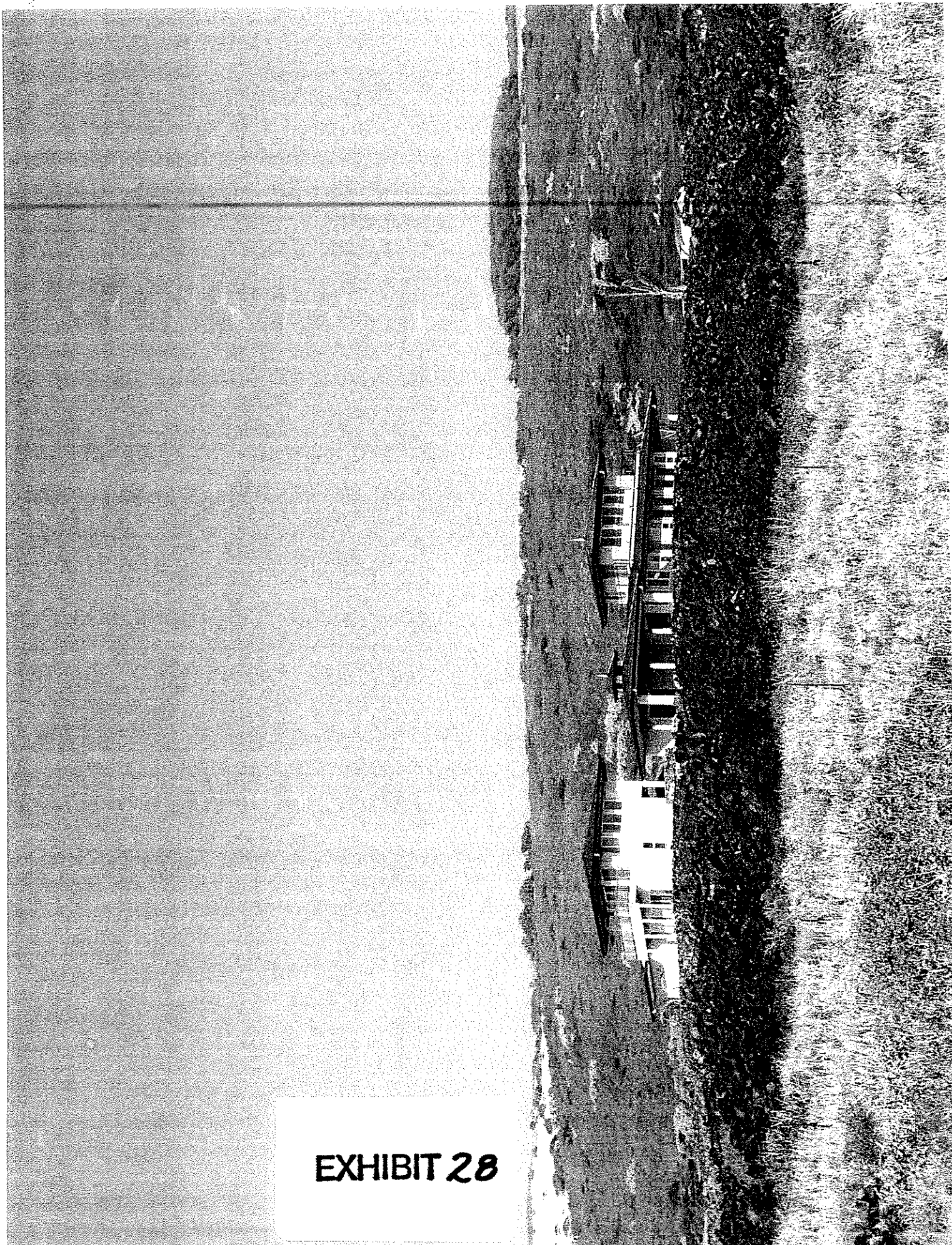


GILBERT S. COLOMA-AGARAN, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

APPROVED AS AMENDED: The Board amended the staff recommendation to include the following:

23. Access will not be denied for people accessing the property who are involved in traditional and customary practices.

**EXHIBIT 28**





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

March 16, 2005

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2005 MAR 22 A 7:54  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

**TO:** Sam Lemmo, Administrator, OCCL

**THROUGH:** Francis Oishi, Acting Administrator, Aquatic Resources  
Alton Miyasata, Acting Program Manager, Aquatic Resources *AM*

**FROM:** Dave Gulko, Aquatic Biologist, Aquatic Resources *DG*

**SUBJECT:** Request for Comments Regarding A Single Family Residence's Potential Impacts on Sea Turtles and Their Hatchlings, near Kaalaiki, Ka'u, Island of Hawai'i

Based upon my review of the attached correspondence, site maps and visuals, and available literature on lighting impacts on sea turtles, the following comments are submitted for your consideration:

1) OVERALL IMPRESSIONS.

The home represents the first substantial building in the immediate area in modern times, in an area whose immediate coastline is well-known for a number of small rocky beaches where the critically-endangered Hawksbill sea turtle (*Eretmochelys*

*imbricata*) is known to nest. Presumably, nesting hawksbills and emerging hatchlings for decades (or longer) have not been exposed to disorientation from long-term, continuous, shore-based lights. Elsewhere, coastal lighting is well-known as a major impediment to both successful nesting and survival of emerged sea turtle hatchlings prior to reaching deeper waters (Gulko, 2004; Witherington & Martin, 2000). Specifically, coastal lighting has been identified elsewhere as a major concern related to the recovery of Hawksbill sea turtles (Meylan & Donnelly, 1999).

The architecture as represented in photos and blueprints features large ocean-facing windows and outdoor (and presumably, lighted) covered lanai areas and grounds approximately eight hundred feet from the shoreline and an unknown elevation above sea level. It is our opinion that the existing structure as described would have the potential to cause negative impacts on nesting sea turtles and their hatchlings.

## 2) POSSIBLE MITIGATION RECOMMENDATIONS (Please note that these recommendations are general ones, and lack information regarding site-specific and structure-specific artificial light impacts associated with this specific structure in Ka'u.)

- a) Erect a Artificial Light Screen: This could be made from a variety of natural (wood fence, stone fence) or artificial (plastic, nylon shade cloth) materials, and could be permanent or temporary in nature (i.e. erected during the annual nesting, hatching seasons). Height of the fence would be based on the angle of light penetration from the second story of the structure down to the ground floor based upon the emerged slope of the land to the beach nesting habitats and the exposed shoreline waters. Note that the screen would need to be erected far enough inland and away from the nesting habitats such that no interaction with nesting turtles or hatchlings would occur.

- b) Plant a Vegetation Buffer: A vegetation buffer, if properly designed, could shield the majority of light from the structure from reaching the prime nesting habitats and beach/access waters where impacts to hatchlings would be maximized. A temporary light screen as described above would need to be erected until such time as the vegetation had grown to a sufficient height and thickness to block the artificial light from the structure.
- c) Re-orient Outside Lighting: For outside lights that are directional, major decreases in beach illumination can be achieved through aiming the light away from the beach and providing enhanced shielding of the light's reflector such that the beam of emitted light is narrowed. Often the best way to do this is through enhancement of the outdoor light's hood. Hoods (or shields) can be fabricated from opaque or non-opaque material and should be done in such a manner such that the light fixture is shielded on at least three sides (or an arc of 180°). Finally, given the elevation of the structure above the coastal and beach habitat, and the intermittent rocky habitat between the structure and the beach, reducing the mounting height of the outdoor lights may effectively and significantly reduce artificial light enhancement of the habitats of concern.
- d) Re-Fit Outdoor Light Fixtures: Witherington and Martin (2000) recommend re-fitting outdoor light fixtures as one of the best ways to minimize artificial light impacts. They recommend low-mounted, louvered bollard fixtures for lighting walkways, pools, patios, entranceways, driveways, parking areas and other areas near beaches. Bollards with louvers prevent light from projecting upward; but care needs to be taken with properly orientating the louvers. Additional recommended lighting fixtures includes downlighting to replace non-directional outdoor fixtures. Downlighting needs to be done in such a manner so that it is recessed enough as to not be visible from the shore or nearshore waters; as mentioned earlier, this is most effective when the height of the fixture is minimized. Additional care needs to be taken with minimizing the reflective nature of the interior surface of the fixture. Step lighting might also be effective

for lighting stairways, walkways and external grounds; especially given the elevation of the structure over the adjacent beach area.

- e) Window Coverings: Opaque blinds or curtains can effectively limit internal lights from impacting the areas of concern; however, they would need to be used every night, all night, during the annual Hawksbill nesting season, and would need to cover all windows where escaping light could have an effect. Window coverings will not address external light source issues.
- f) Window Tinting: Window tinting has been shown to be effective elsewhere when such tinting achieves an “inside-to-outside light transmittance ratio of 45% or less” (Eckert & Horrocks, 2002).
- g) Reduce Structure and Vehicle Illumination to the Minimum Necessary: This is a behavioral modification that can be incorporated during nesting season.

In conclusion, the review of the original CDUA should have addressed these issues given what's known about Hawksbill use of the nearshore and beach areas in this region and the lack of history of structures at this site. It is difficult to properly assess potential impact lacking the full documentation after the fact. However, we do feel that based on the limited material available to us for review there is a concern regarding the existing situation. Specifically, based on the information at our disposal, we believe that the potential impacts on endangered Hawksbill sea turtles posed by night-time lighting at this site are substantial and recommend consideration of mitigative strategies in consultation with the NMFS Office of Protected Resources and the USFWS Ecological Services.

References cited:

Eckert, KL & Horrocks, JA (2002). Sea Turtles and Beachfront Lighting: An Interactive Workshop for Industry Professionals and Policy- Makers in Barbados. Wider Caribbean Sea Turtle Action Network Technical Report #01. 44 pp.

Gulko, DA & Eckert, KL (2004). Sea Turtles: An Ecological Guide. Mutual Publishing, Honolulu, HI. 168 pp.

Meylan, AB & Donnelly, M (1999). Status justification for listing the hawksbill turtle (*Eretmochelys imbricata*) as Critically Endangered on the 1996 IUCN Red List of Threatened Animals. *Chelonian Conservation & Biology* 3(2): 200 – 224.

Witherington, BE & Martin, RE (2000). Understanding, Assessing, and Resolving Problems on Sea Turtle Nesting Beaches, 2<sup>nd</sup> ed., rev. Florida Marine Research Technical Report TR-2. 73pp.

Cc: Jeff Walters, HIHWNMS  
Kimberly Mills, OCCL



7-12-83 PM

EXHIBIT 30

An aerial photograph showing a coastal area. A narrow strip of land, possibly a pier or a small island, extends into the water. On this strip, there is a small, light-colored building with a dark roof. The surrounding water is dark and textured, and the land to the right is covered in dense, dark vegetation. The overall image is in black and white with a grainy texture.

EXHIBIT 31

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

**Memorandum**

2005 MAY 23 A 8: 08

To: Melanie Chinen, Administrator  
State Historic Preservation Division  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Doc No:0504k104

From: Keola Lindsey, Burial Sites Program  
State Historic Preservation Division

RE: Conservation District Use Application (CDUA) No. Ha-3002  
Kaalaiiki and Hokukano Ahupua'a, Ka'u District, Hawai'i Island  
TMK (3) 9-5-16: 36

**Background**

This memorandum is in response to concerns that a single family residence has been constructed on a Native Hawaiian Cemetery on the above mentioned parcel, which is located in the Conservation District.

**Archaeological Record:**

Bishop Museum site record for Site Ha-B11-95 dated June 1962. Describes site as:

*"19 burials with possibility of more. Some with 1,2, or 3 edges built up; center of some collapsed; others in good condition."*

"Archaeological Burial Record" University of Hawai'i-Hilo Campus, undated but most likely after 1962. Punalu'u-Honuapo Archaeological Survey. Site recorded by Violet Hansen, and the information apparently provided to UH Hilo. Describes site as:

*"On top, at edge of lava flow and approximately within a 500 foot square are 19 burials with a possibility of more. Sizes range from 6' x 8' to 10' x 12', height varies from 2' to 6'. Some that are on the very edge have 1,2, or 3 sides built up, centers of some have collapsed, others in good condition."* [seems to use the earlier Bishop Museum site description for the most part].

Statewide Inventory of Historic Places 1973-1974. Supplementary feature description form identifies features as Site 10-24-4375 and describes:

*"This burial complex lies on Arthur Ulrich lands, and since he refused permission for us to enter, this write-up is based on previously existing data, with no field check...It is difficult to assign any significance to this complex other than that attributed to a recognized burial area, because we didn't actually get to field check these sites. However, they should rate a reserve classification."*

EXHIBIT 32

### Review of CDUA History on file in the SHPD-Hawai'i Island Office

There have been two CDUA's related to this parcel- one in 1978, the second in 2001.

**A July 7, 1978 DLNR-Division of Forestry Memorandum** comments on CDUA HA/6/2/78- 1065 and reports that the former landowner (Arthur Ulrich) of the subject parcel:

*"...graded the house site and planned reservoir...The land is zoned conservation and work was done without a CDUA permit."*

It goes on to report:

*The proposed house site is in the middle of an ancient cemetery. Work may have destroyed some graves and exposed what appears to be human bones from one grave site. Damage has been done to other graves by bulldozer work.*

*There are numerous grave sites along the edge and embankments of the a'a flow which will be fronting his proposed residence."*

And it concludes:

*"Recommend disapproval of CDUA until a historic survey is conducted, and an environmental assessment be made. Since a conservation district violation has apparently been committed, a CDUA violation report will be filed."*

Photographs are included with this memorandum, and appear to confirm the house pad and access road already graded in 1978.

It appears that the alleged destruction and/or disturbance of graves on the subject property was never addressed in 1978 by way of investigation and prosecution, and it remains unclear what laws and enforcement entity were in place at the time to do so.

**A November 3, 2000 DLNR letter (Hibbard to Lim)** are the only SHPD comments on file in the Hawai'i Island Office on a proposed single family residence on the subject parcel. Parcel is now owned by the Carrolls. The letter states:

*"...It is our understanding that your client wishes to build a single family residence in the parcel on a previously graded house pad...The access road and pad, which are located on the leading edge of an a'a flow, have been graded in the past..."*

*There are known significant archaeological sites located in the parcel. These include the government beach trail running along the coast, platforms and mounds adjacent to the trail, and habitation sites near Kawa springs located just north of the parcel along the*

shoreline. Before approving any additional land altering activity in the parcel, we would recommend an archaeological inventory survey of the parcel.

*We believe a house could be constructed on the existing house pad on the condition that there is no additional grading work conducted off the existing pad and access road. If your client agrees to the above condition, then the proposed action will have "no effect" on significant historic sites. In the future, if the parcel is developed, an archaeological inventory survey would be requested by our office prior to any permit approvals..."*

It appears based on this letter that the SHPD concurred with the proposed construction of an SFR on the condition that the house would be within the previously graded (in 1977) house pad, and that there was no additional land alteration on the subject parcel. The issue of destroyed burials is never addressed in this letter.

**CDUA No. HA-3002B** (2001 page 4) reports that:

*"Prior to making application around 1978, the previous landowner graded the proposed house site and access road at the a'a lava outcrop without authorization. In 1977, according to the County of Hawai'i, Historic Site No. 4375, consisting of approximately nineteen burial sites, which was nominated to the Hawai'i Register of Historical Places, was destroyed."*

Page 7 states:

*"Staff conferred with Historic Preservation staff in this matter and does understand that grading in the late 1970's destroyed the burials at the subject location. The recent site visit by and letter from Historic Preservation Division indicates that work may proceed. Staff understands that burial remains may exist adjacent to proposed construction sites areas, but are not likely to be impacted by the construction."*

It remains unclear what background information on the alleged destruction of a cemetery was available to SHPD staff in 2000, and why the issue was not addressed at the time. The BLNR issued CDUP HA-3002 as amended on February 23, 2001.

#### **SHPD Site Inspection October 13, 2004**

Current SHPD staff were informed of Ka'u Community concerns regarding burials on this parcel in May of 2004. A site inspection was conducted to assess the condition of burials adjacent to the current landowner's project area, and to discuss concerns that the site grading may have exceeded the CDUP approved area.

There are archaeological features in close proximity to the Carroll residence both on their property and on the adjacent State property. These features have never been formally recorded (by an archaeological inventory survey in compliance with our current statutes and administrative rules), and thus, there are no short or long term plans that provide protection for the sites in place.



It could not be determined if the current landowners have violated the conditions of their CDUP, and the landowners denied grading outside the approved area.

A layer of base course has been placed over the original graded area, and examination of this area for displaced and/or in-situ human remains was impossible.

### **Conclusion**

It remains unclear if the OCCL has determined whether or not the CDUP has been violated. If no violation of the CDUP has occurred, and if the CDUA process which incorporated SHPD's comments on the issue is valid, it does not appear the current landowners have violated any Historic Preservation Rules or Statutes.

Based on the archaeological records available, it does appear that archaeological sites presumed to be burials were either destroyed, disturbed and /or altered by unauthorized grading in 1977. It appears the former landowner is responsible for this alleged activity. It remains unclear what legal authority the State of Hawai'i currently has to investigate and prosecute the former landowner for these activities that took place 27 years ago.

It remains unclear what authority the State of Hawai'i has to conduct archaeological investigations within the area that was previously graded in 1977, and is currently under base course and the Carrol residence. The goal of these investigations would be to determine the presence or absence of disturbed or in-situ human remains.

If this does end up in litigation, the archaeological record identifying the burials would come into question, as it appears the sites were identified as burials based on construction style as opposed to the actual identification of in-situ human remains present within the sites.

It remains unclear if there is oral testimony within the Ka'u Community or information within the historical record that would specifically identify the sites as burials.

Archaeological testing of features in close proximity (on the a'a flow) to the project area may support the original interpretation of the site as a cemetery.



COUNTY OF  
HAWAII

PLANNING DEPARTMENT  
SURVEY DIVISION

25 AUPUNI STREET • HILO, HAWAII 96720  
D.A.G.S.

HERBERT T. MATAYOSHI  
Mayor

SIDNEY M. FUKU  
Director

DUANE KANUHA  
Deputy Director

JUL 14 8 14 AM '77

CERTIFIED MAIL

July 12, 1977

Mr. Arthur H. Ulrich  
P.O. Box 35  
Volcano, HI 96785

Dear Mr. Ulrich:

GRADING AND EXCAVATION ACTIVITIES  
TMK: 9-5-16:36 and Por. 03

Upon receipt of a complaint, my staff conducted an on-site inspection of the above-referenced properties on June 24 and observed the following:

1. A newly graded access road to the shoreline from the Hawaii Belt Road of approximately twenty (20) feet width;
2. the depositing of red cinders onto the access road by a dump truck,
3. the sounds of a bulldozer further seaward.

In a discussion with my staff, you stated that you received permission from Messrs. Kazutaka Saiki, State Land Surveyor, and Wayne Subica, Soil Conservation Service Technician, to proceed with the aforementioned activities. You also stated that a land exchange had taken place between the State and yourself.

During this discussion, my staff pointed out that your property is located within the Special Management Area and that no "development" can occur within this area without the Planning Commission's approval.

Further staff investigation verified that a land exchange between you and the State of Hawaii had been executed on July 13, 1976, and that the Soil Conservation Service had approved your project.

In speaking with Mr. Mike Shimabukuro of the Department of Land and Natural Resources, Land Management Division, it was revealed that authorization for bulldozing and excavating was not granted by their office.

EXHIBIT 33

On July 1, 1977, our staff conducted another on-site inspection of the subject properties and found the following:

1. A roadway, covered with red cinder and running in a mauka-makai direction, had been constructed from the Hawaii Belt Road to the government beach trail. The subject roadway was approximately twenty (20) feet wide and fourteen hundred (1400) feet in length.
2. Another roadway, running approximately parallel to the government beach trail, had been constructed from the intersection of the mauka-makai roadway and the government beach trail from the south property line to the northernmost property line, approximately fifteen (15) feet wide and thirty-two hundred (3200) feet in length and intersecting with the existing government beach trail in at least three places.
3. A third roadway, partially covered with red cinder and running approximately parallel to the Hawaii Belt Road, had been constructed along the westernmost property line, approximately twenty (20) feet wide and one thousand (1000) feet in length.
4. An area of approximately 150 feet by 200 feet immediately adjacent and seaward of the third roadway had been leveled, and a reservoir, approximately 60 feet by 80 feet by 8 feet deep, had been constructed on the southern side of the bulldozed area.
5. A historic site (No. 4375) had been destroyed during clearing and construction of the reservoir.
6. Access onto the government beach trail from the State land on the south side had been blocked with stones and boulders.

Further staff investigation of this matter revealed the following:

1. The subject properties are zoned Conservation by the State Land Use Commission. Any use that is to be established or any improvements made within this district requires a Conservation District Use Permit from the Board of Land and Natural Resources.
2. Historic site No. 4375 consists of approximately nineteen (19) burial sites and agricultural terraces and was nominated to the Hawaii Register of Historical Places.



Mr. Arthur H. Ulrich  
Page 3

3. Upon verbally conferring with representatives of the Department of Public Works, we were informed that approval of your project by the Soil Conservation Service may not fully comply with the requirements of the County Grading Ordinance (Ordinance No. 168). Therefore, they have requested that you contact them regarding this matter.
4. As my staff verbally informed you on June 24, the subject properties are located within the County's Special Management Area (SMA), established pursuant to Rule 9.2 of the Planning Commission's Rule No. 9, Rules and Regulations Relating to Environmental Shoreline Protection. The work that was performed is defined as "development" under this rule, and Rule 9.10 further states that "No development or structure shall be initiated within the Special Management Area without first obtaining a permit pursuant to these Rules and Regulations."

Based on the above, we must regretfully inform you that an infraction of Rule No. 9, of the Planning Commission's Rules and Regulations, has been committed. As such, you are hereby notified that all work on the subject properties must immediately cease and desist, and that you must apply for a Special Management Area (SMA) Use Permit within fifteen (15) calendar days upon receipt of this letter.

Enclosed are the necessary application forms and a copy of Rule No. 9 for your convenience and information.

Please be advised that we have referred this matter to the other affected agencies and the Corporation Counsel for their review and appropriate action.

Should you have any questions, please do not hesitate to contact Francis Saiki of this department at 961-8288.

Thank you very much.

Sincerely,

*Sidney Fuke*  
SIDNEY FUCE  
Director

FS/DK:mmk  
Enclosures

xc: Mayor's Office (Harry Ruddle)  
Corporation Counsel  
Department of Public Works  
District Engineer (Charles Schuster)

No. 563191

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)	
SENT TO	Mr. Arthur H. Ulrich
STREET AND NO.	P. O. Box 35
P.O., STATE AND ZIP CODE	Volcano, Hawaii 96785
OPTIONAL SERVICES FOR ADDITIONAL FEES	
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered 3¢ 2. Shows to whom, date and where delivered 35¢ 3. Shows to whom, date and where delivered 35¢
DELIVER TO ADDRESSEE ONLY	80¢
SPECIAL DELIVERY (extra fee required)	
PS Form 3800	NO INSURANCE COVERAGE PROVIDED (See other)
H-76-12	NOT FOR INTERNATIONAL MAIL

POSTMARK OR DATE  
AUG 4 1978  
HAWAII  
AA-1065  
ED-1054

November 24, 1978

REF. NO.: HA-6/2/78-1065

Mr. Arthur H. Ulrich  
P. O. Box 35  
Volcano, HI 96785

Dear Mr. Ulrich:

Conservation District Use Application  
for Single Family Dwelling and  
Stock Grazing Use at Kau, Hawaii

We regret to inform you that the Board of Land and Natural Resources at its meeting of November 22, 1978, under agenda Item H-4, denied, without prejudice, your above noted application, on the basis that:

The SMA clearances from the County of Hawaii, pursuant to the provisions of Chapter 205A-29 (d), Hawaii Revised Statutes, have not been executed.

In the event that the County denies the SMA permit, the applicant shall restore the area to its previous undisturbed condition. Should the County approve the SMA, the applicant shall resubmit the SMA with the ODU for action.

Should you have any questions, please contact our Planning Office at 548-7837.

Very truly yours,



W. Y. THOMPSON  
Chairman of the Board

cc: Hawaii Board Member  
Hawaii Land Agent  
U. S. Fish and Wildlife  
Department of Health  
Department of Agriculture  
COH - Planning  
COH - Water Supply  
COH - Public Works

bcc: Land Management  
DOWALD  
Fish & Game  
Forestry  
State Parks  
Historic Sites  
NARS

RECORDATION REQUESTED BY:

DEPT. OF LAND AND NATURAL RESOURCES  
LAND MANAGEMENT DIVISION

AFTER RECORDATION, RETURN TO:

DEPT. OF LAND AND NATURAL RESOURCES  
LAND MANAGEMENT DIVISION

RETURN BY: MAIL ( ) PICKUP (X)

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECEIVED FOR RECORD

76- 55538

LIBER 11531 PG 75  
1976 JUL 13 PM 2:21

Christmann III  
REGISTRAR

EXCHANGE DEED  
and  
AGREEMENT FOR EXCHANGE

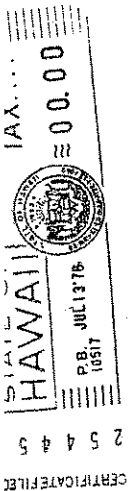
THIS INDENTURE, made and entered into this 8<sup>th</sup>  
day of December, 1975, by and between the STATE OF  
HAWAII, by its Board of Land and Natural Resources, herein-  
after referred to as the "GRANTEE" and ARTHUR H. ULRICH,  
husband of Euela L. Ulrich, whose residence is Volcano, ELU my n.p.  
Hawaii and whose post office address is P. O. Box 35, Volcano,  
Hawaii 96785 respectively, hereinafter referred to as the  
"GRANTOR",

W I T N E S S E T H:

WHEREAS, the Grantor is the owner of Parcel 2,  
situate at Hokukano and Kaalaiki, Ka'u, Island of Hawaii,  
Hawaii, hereinafter more particularly described, which  
the Grantee desires to acquire for a public purpose, namely,  
the Redesignation of Access to Hawaii Belt Road, Punaluu,  
Ka'u, Hawaii; and

WHEREAS, the Grantee is the owner of Parcel 1,  
situate at Hokukano and Kaalaiki aforesaid, hereinafter  
more particularly described, which the Grantor is willing  
to accept in exchange for the parcel first above-mentioned;  
and

EXHIBIT 35



WHEREAS, the land of the Grantee has an appraised value of ONE THOUSAND FOUR HUNDRED TWENTY-SEVEN AND NO/100 DOLLARS (\$1,427.00), and the land of the Grantor has an appraised value of ONE THOUSAND FOUR HUNDRED TWENTY-SEVEN AND NO/100 DOLLARS (\$1,427.00); and

WHEREAS, the public land to be exchanged is of use comparable to that of the land owned by the Grantor;

NOW, THEREFORE, the Grantor in consideration of the covenant of the Grantee as hereinafter set forth and the conveyance of Parcel 2 to the Grantee, does hereby grant to said Grantee, its successors and assigns, absolutely and in fee simple, that certain parcel of land situate at Hokukano, Ka'u , more particularly described in Exhibit "A" and delineated on Exhibit "B", both of which are attached hereto and made a part hereof, said exhibits being, respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S. F. No. 17,501 and dated July 7, 1975.

TO HAVE AND TO HOLD the same, together with all the rights, easements, privileges tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining or held and enjoyed therewith, unto said Grantee, its successors and assigns, forever.

AND said Grantor, his heirs and assigns, covenants that he is lawfully seized of the granted parcel in fee simple, and that he has good right to grant and convey the same as aforesaid; that the same is free and clear of all

encumbrances and that he will and his heirs and assigns shall WARRANT AND DEFEND the same unto said Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons whomsoever.

AND EUELA L. ULRICH, wife of Arthur H. Ulrich, *ELL May, h.f.* for the consideration aforesaid, does by the presents release, remise and forever quitclaim unto said Grantee, its successors and assigns, all of her estate, right, title and interest of whatsoever kind or nature and howsoever acquired, whether by way of dower, community property or otherwise, in and to the above described property and every part thereof.

AND the Grantee, in consideration of the conveyance to it of the foregoing described parcel of land, does hereby covenant that it will convey to the Grantor, his heirs and assigns, by a separate instrument in the nature and form of a Land Patent, subject to mineral and water reservations and covenant on discrimination, Parcel 1, situate at Hokukano, Ka'u, Hawaii, more particularly described in Exhibit "C" and delineated on Exhibit "D", both of which are attached hereto and made a part hereof, said exhibits being, respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. No. 17,500 and dated July 7, 1975.

This exchange of lands shall be subject to disapproval by the legislature by two-thirds vote of either the

Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of such disposition.

IN WITNESS WHEREOF, the STATE OF HAWAII, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 1st day of June, 1976, and ARTHUR H. ULRICH and EUELA L. ULRICH, have caused these presents to be executed this 8th day of December, 1975, both effective as of the day and year first above written.

STATE OF HAWAII

By C. Cobb  
Chairman and Member  
Board of Land and  
Natural Resources

And By David M. Munn  
Member  
Board of Land and  
Natural Resources

Arthur H. Ulrich  
ARTHUR H. ULRICH

Euela L. Ulrich  
EUELA L. ULRICH

APPROVED AS TO FORM  
AND LEGALITY:

Devin Watson  
Deputy Attorney General  
Dated: November 17, 1975

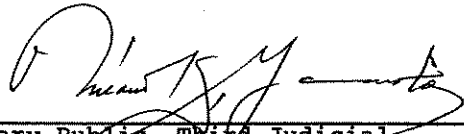
STATE OF HAWAII )  
COUNTY OF HAWAII )

LIBER 11531 PG 79

: ss.

On this 8<sup>th</sup> day of December, 1975,

before me personally appeared ARTHUR H. ULRICH and EUELA L. ULICH, H.P.  
ULRICH, to me known to be the persons described in and who  
executed the foregoing instrument and acknowledged that they  
executed the same as their free act and deed.

  
\_\_\_\_\_  
Notary Public, Third Judicial  
Circuit, State of Hawaii

My commission expires: Sept. 13, 1979

mm



LIBER 11531 PG 80

STATE OF HAWAII  
SURVEY DIVISION  
DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 17,501

July 7, 1975

LAND EXCHANGE  
ROAD RIGHT-OF-WAY  
PARCEL 2

Kaalaiki, Ka'u, Island of Hawaii, Hawaii

Being a portion of Grant 2370 to Noa Malailua.

Beginning at the northwest corner of this parcel of land, on the northeasterly boundary of the Government Land of Hokuano, and on the south-east side of Mamalahoa Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 13,092.71 feet South and 8094.10 feet West, thence running by azimuths measured clockwise from True South:-

1. 210° 22' 10" 104.37 feet along the southeast side of Mamalahoa Highway;
2. Thence along the remainder of Grant 2370 to Noa Malailua on a curve to the left with a radius of 60.00 feet, the chord azimuth and distance being: 358° 01' 05" 64.21 feet;
3. 325° 40' 1003.57 feet along the remainder of Grant 2370 to Noa Malailua;
4. 50° 40' 60.23 feet along the remainder of Grant 2370 to Noa Malailua;
5. 145° 40' 1018.47 feet along Government Land to the point of beginning and containing an AREA OF 62,049 SQUARE FEET.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

Compiled from map by  
John N. Smith, HSS  
Flat 124 and other  
Gov't. Survey Records.

By: Ichiro Sakamoto  
Ichiro Sakamoto  
Land Surveyor

cm

EXHIBIT "A"







LIBER 11531 PC 82

STATE OF HAWAII  
SURVEY DIVISION  
DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 17,500

July 7, 1975

LAND EXCHANGE  
ROAD RIGHT-OF-WAY

PARCEL 1

Hokukano, Ka'u, Island of Hawaii, Hawaii

Being a portion of the Government Land of Hokukano.

Beginning at the west corner of this parcel of land, and on the southeast side of Mamalahoe Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 14,240.91 feet South and 8766.91 feet West, thence running by azimuths measured clockwise from True South:-

1. 210° 22' 10" 218.08 feet along the southeast side of Mamalahoe Highway;
2. Thence along Government Land on a curve to the left with a radius of 60.00 feet, the chord azimuth and distance being:  
347° 01' 05" 82.38 feet;
3. 303° 40' 580.13 feet along Government Land;
4. 50° 40' 102.18 feet along Grant 2370 to Noa Malailua;
5. 123° 40' 537.71 feet along Government Land;
6. Thence along Government Land on a curve to the left with a radius of 60.00 feet, the chord azimuth and distance being:  
77° 01' 05" 87.26 feet to the point of beginning and containing an AREA OF 62,047 SQUARE FEET.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

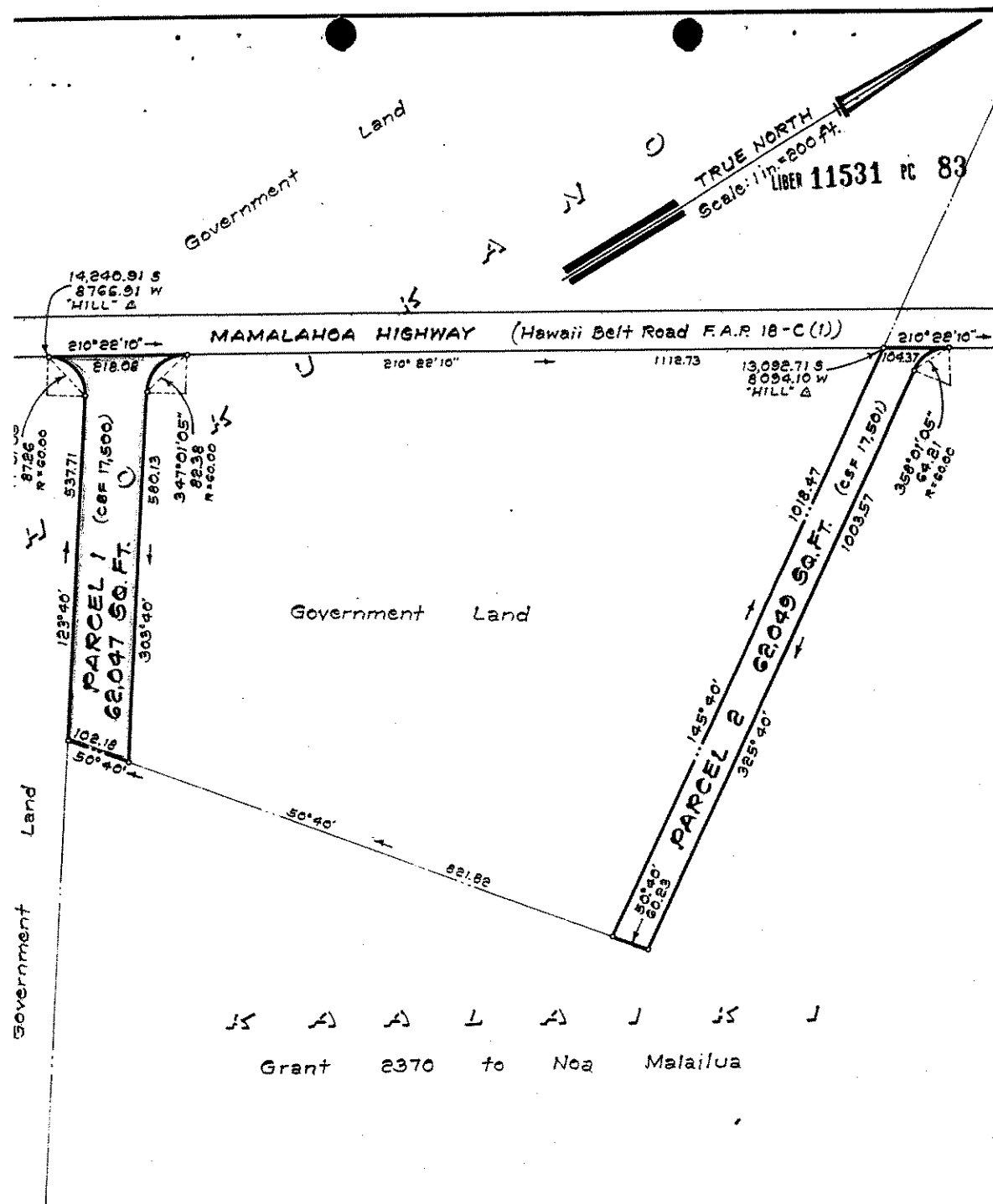
Compiled from map by  
John N. Smith, HSS  
Flat 124 and other  
Gov't. Survey Records.

By:

Ichiro Sakamoto  
Ichiro Sakamoto  
Land Surveyor

cm

EXHIBIT "C" 12



IOB H-7280  
D.BK

TAX MAP 9-5-16

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND

SERVICES

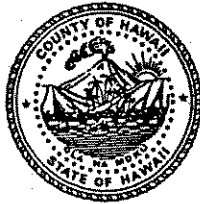
C. S. F. No. 17,500-17,501

STATE OF HAWAII

R.K. July 7, 1975



Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**  
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

November 1, 2005

Mr. Samuel J. Lemmo  
Administrator  
Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
P.O. Box 621  
Honolulu, Hawaii 96809

RECEIVED  
OFFICE OF CONSERVATION  
LANDS  
2005 NOV -8 A 8:47

Dear Mr. Lemmo:

**Subject: Carroll Single Family Residence CDUP HA-3002**  
**Public Shoreline Access**

**Tax Map Key: (3) 9-5-016:036 Hokuano, Ka'u, Island of Hawai'i**

As you may know, Special Management Area Use Permit No. 79 (SMA 79), which was approved by the County of Hawaii's Planning Commission on November 29, 1978 affecting the subject property, was subsequently nullified by the Planning Commission on December 3, 1981.

SMA 79 allowed for road grading, construction of a water reservoir, fence, ranch quarters building, a windmill, digging a water well, installation of a waterline and electric service poles, leveling of approximately 12 acres of land, and landscaping. Some of the above activities were actually conducted prior to the previous landowner's application for a SMA Use Permit, including much of the road grading, miscellaneous grading activities, and construction of the reservoir.

Condition No. 2 of SMA 79 required "(t)hat public access to the shoreline shall be provided along the petitioner's access road from the Hawaii Belt Road. The exact terms of the public access, e.g., width, improvements and liability, shall use as a reference Chapter 46-6.5, Hawaii Revised Statutes, relating to public access. They shall be determined by the County through the Planning Director prior to the granting of final subdivision approval for the access road from  
*Hawai'i County is an equal opportunity provider and employer.*

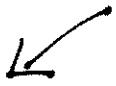
EXHIBIT 37

Mr. Samuel J. Lemmo

Page 2

November 2, 2005

*the Hawaii Belt Road. A copy of said terms shall be forwarded to the Planning Commission for information."*

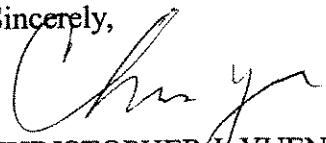
A land exchange agreement between the BLNR and Arthur Ulrich, then owner of the subject property, dated December 8, 1975 was executed creating the currently configured Parcel 36, except for the more recent subdivision (SUB 7208) that created Parcel 41. Mr. Ulrich was instructed by BLNR Chairman Cobb's letter of 7/6/77 to *"prepare the necessary mapping and obtain the required approval from the County of Hawaii to effect the subdivision of said Parcels 1 and 2 and the consolidation of these two parcels with the respective property."* This is the subdivision approval referenced in Cond. No. 2, but no application for the subdivision and re-consolidation was ever submitted to the County. To date the tax map still shows the exchanged land areas as separate parcels or lots (1 & 2) as parts of the respective TMK parcels they were to be consolidated with. 

According to our records the land exchange was deemed by the State to satisfy the public purpose requirement of Hawaii Revised Statutes, namely to provide a safer access and egress to Hawaii Belt Road from the subject property. Testimony given before the Planning Commission hearings preceding approval of SMA 79 established that local residents had enjoyed long-standing usage along the alignment of the current access road to reach the shoreline. Therefore, the County of Hawaii desires that an easement providing for public pedestrian access from Hawaii Belt Road to the shoreline be created along the current access road.

The foregoing is being provided in response to your request for information from this office on the status of the public access provisions of SMA 79; and pursuant to our request that your office consider amending the terms and conditions of CDUP HA-3002 to ensure that public access to the shoreline along the applicant's access road be provided.

Should you have questions, please feel welcome to contact Larry Brown or Esther Imamura of my staff at 961-8288.

Sincerely,

  
CHRISTOPHER J. YUEN  
Planning Director

LMB:cd

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